

The University of Chicago

THE LEGAL BASIS OF THE ORGAN-
IZATION AND ADMINISTRATION
OF THE PUBLIC SCHOOLS
OF ILLINOIS

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATION

1937

By

WILLIAM WADE HAGGARD

Private Edition, Distributed by
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CHAPTER I INTRODUCTION

Purpose of Study

The purpose of this study is to trace the development of educational policy in Illinois as expressed in constitutional provisions, statutory enactments, and court decisions relating to schools. An effort will be made to find the origins of the more significant aspects of the present public school system in Illinois and to trace these aspects of the school system from the beginning of each to the present time. The analytical as well as the genetic approach will be employed in this study. Considerable emphasis will be placed on the legal basis of the present organization and administration of the schools. It is proposed that the study shall introduce a number of court decisions relating to practical problems of school administration. The phases of the school system of the state that will be studied are the constitutional and legislative control of schools, the state agencies in education, the school district, local school administration, the financial support of schools, and the legal status of pupils and teachers. An attempt will be made to present a comprehensive view of the schools from the legal point of view. It is not the purpose of this study either to write a complete history of the schools of Illinois or to propose forms of reorganization. The treatment of the evolution of the educational policy of the state as expressed in law will, however, necessitate the introduction of a considerable amount of historical data. Moreover, proposals for reorganization may be implied in some instances. Special charter school districts and districts with a population exceeding five hundred thousand inhabitants are not included in the study.

Sources

The sources of material are the federal laws relating to school lands in the Northwest, the debates of the constitutional

conventions of the state, the session laws from 1818 to the present time, the journals of the senate of the state, the journals of the house of representatives, the reports of the Supreme Court of the state, and in some instances the reports of the Appellate Court, the reports of the Attorney General, the biennial reports of the State Superintendent of Public Instruction, the reports of investigations issued by the Department of Research and Statistics of the Illinois State Teachers' Association, and the reports of the State Auditor of Public Accounts. Other material of miscellaneous nature relating to the development of educational policy in Illinois will be drawn on in this study.

CHAPTER II
CONSTITUTIONAL AND LEGISLATIVE CONTROL OF
THE PUBLIC SCHOOLS IN ILLINOIS

Introduction

A proposal to study the legal basis of the public schools of Illinois immediately suggests constitutional restrictions relative to the development of educational policy. The relation of the federal government to schools, the development of constitutional provisions relating to schools in Illinois, the scope of authority of the legislature, and the constitutional restrictions upon the formulation and execution of educational policy in Illinois will, therefore, be treated in this chapter.

The Relation of the Federal Government
to Schools

The Constitution of the United States contains no specific reference to education. The federal government is a government of delegated or enumerated powers. It, therefore, exercises no control over the schools in the states except as it may derive authority from certain powers implied in the Constitution. The immediate control of schools remains with the several states. The Tenth Amendment is as follows: "The powers not delegated to the United States, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

It should be pointed out that the federal government influences education in the states by prescribing the conditions for statehood. The federal government also influences education in the states by exercising the powers implied in "the general welfare" clause¹ of the Constitution and in the constitutional provision which authorizes Congress to make "the needful rules and regulations respecting . . . property belonging to the United States."² Moreover, the Supreme Court reviews state

¹Article I, sec. 8:1.

²Article IV, sec. 3:2.

legislation allegedly violative of "the due process of law" clause of the Fourteenth Amendment.

The Congress, under authority of the foregoing clauses of the Constitution, has from time to time made grants of land and money for education to the states and has gone so far as to supervise, at least partially, the application of educational grants in the states. Certain decisions of the federal Supreme Court involving "the due process of law" clause have had a very significant relationship to the shaping of state educational programs.

The relation of the federal government to the schools of Illinois may be summed up in this manner. The federal government has influenced education in Illinois by land grants and by stipulating the use of the proceeds from the sale of these lands. It is now, to some extent, shaping educational policy in Illinois by money grants and by defining the conditions under which the state may accept them. The federal Supreme Court decisions bearing upon the state's exercise of the police power, even though no Illinois case has been reviewed by the court, affect educational policy in this state.

Constitutional Development and Provisions Relating to Education in Illinois

Illinois has formulated five constitutions since its admission to statehood in 1818. The constitutions formulated by the Conventions of 1818, 1847, and 1869 were approved by the people. The documents drawn up by the Conventions of 1862 and 1920-1922 were not ratified by popular vote. The conventions were influenced appreciably by the trend in other states toward the inclusion of detailed provisions in the constitutions. Evidence of this trend will be shown with emphasis on educational provisions.

The Constitution of 1818.--The Constitutional Convention which assembled at Kaskaskia on August 3, 1818, and adjourned on August 26, based its work largely on the Constitutions of New York, Kentucky, Ohio, and Indiana.¹ The first constitution adopted, as previously pointed out, was brief. It contained ap-

¹Illinois Constitutions, Constitutional Series, ed. Emil Joseph Verlie, I, xxi. Collections of Illinois State Historical Library, Vol. XIII. Springfield: Trustees of the Illinois State Historical Library, 1919.

proximately 7,100 words.¹ No mention of education was made in the first constitution. It should be pointed out, however, that the Constitutional Convention of 1818 accepted the proposition of the Congress with respect to setting aside certain public lands, the proceeds from the sale of which were to be used for school purposes.² Moreover, the General Assembly passed the first free school law under the first constitution. This law was soon nullified by subsequent legislation, however.³

The Constitution of 1848.--The second constitution, adopted in 1848, contained approximately 11,900 words (excluding the apportionment of the state into legislative districts).⁴ Broadly speaking, the trend of changes made in this constitution was in the direction of curtailing the powers of the General Assembly and enlarging those of the people. All state and county officers were made elective, even the judges of the Supreme Court.

One provision⁵ relating to the support of education, very general in nature, included in the Constitution of 1848, was that property deemed necessary for school purposes might be exempted from taxation, that the corporate authorities of school districts might be empowered to assess property and collect taxes on the same, and that taxes should be uniform in respect to persons and property.⁶ It is interesting to note that the General Assembly in 1855 passed the first effective free school law in the state's history under this constitution.⁷

The proposed Constitution of 1862.--The Constitutional Convention of 1862 was the turning point in the formulation of educational provisions. The people had become perceptibly conscious of the state's responsibility for schools. The proposed Constitution of 1862 contained the mandate for the first time that the General Assembly should provide for a state system of

¹Ibid., pp. 25-47.

²Ibid., pp. 20-22.

³Laws of Illinois, 1824, pp. 121-24.

⁴Illinois Constitutions, op. cit., pp. 51-99.

⁵A constitutional provision in this study is interpreted to mean all the text bearing upon a particular phase (financial support, the State Superintendent, etc.) of the schools.

⁶Illinois Constitutions, op. cit., pp. 81-84.

⁷Laws of Illinois, 1855, pp. 51-91.

free schools.¹ This mandate was as follows: "The General Assembly shall provide for a uniform, thorough, and efficient system of free schools throughout the state."² The Convention of 1862 was also the first convention to provide for the office of the State Superintendent of Public Instruction. It was prescribed that his election should be by the people for a term of two years, and that his duties should be defined by law. This provision, as well as the preceding one, was significant in that it influenced greatly the Convention of 1870 which formulated the present constitution.

Another provision included for the first time in a constitution was a mandate that the principal of all funds and moneys arising from the sale of lands and other property entrusted to the state for educational purposes, should forever be held inviolate, and that the income therefrom should be applied to the support of the common schools. The proposed Constitution of 1862 was the first constitution to include the prohibition that the school district should not extend its credit to the aid of an individual, association, or corporation. The Constitution of 1848 contained the remaining provision of significance in this constitution, namely, that the school district was empowered to assess and collect taxes for corporate purposes.

The other provisions in the proposed Constitution of 1862 relating to education were very general in their nature and in an instance or two inconsequential, especially that school taxes and assessments should be collected by the same person.

The Constitution of 1870.--The present constitution adopted in 1870 is still more detailed regarding the organization of the government. It contains approximately 18,700 words as contrasted with 7,100 words in the Constitution of 1818 and 11,900 words in the Constitution of 1848.³

The present constitution (1870) contains eight educational provisions. Two of these provisions are restatements of provisions included in the previously proposed constitution (1862), and five are included for the first time. The General Assembly's

¹Illinois Convention Journal, 1862, pp. 1072-1114.
Springfield: Illinois State Library.

²Constitution of 1862, Art. X, sec. 3.

³Illinois Constitutions, op. cit., pp. 25-176.

mandate to provide a state system of schools is revised. The State Superintendent's term of office is extended from two to four years and three duties are imposed upon him, namely, that he shall reside at the capital during his term of office, keep the records of the office there, and make a biennial report to the Governor. The office of the county superintendent of schools receives its first constitutional recognition, but it may or may not be established at the discretion of the General Assembly. Local or special laws for the management of schools, diversion of public money for sectarian purposes, the participation of school officers or teachers in the sale and profits of school supplies in the school with which officer or teacher may be affiliated, and excessive debt limits of school districts are prohibited in the present constitution for the first time in Illinois constitutions.

The proposed Constitution of 1922.--The Constitution of 1922 which failed to receive the approval of the electorate contained a considerable volume of detail, without liberalization of the amending clause sufficient to make the constitution adaptable to changing conditions.¹ The article on taxation in particular contained an excessive amount of detail, which is partially explained by the fact that the article included the provision for the graduated income tax. The liberalization of the revenue clause was significant, however. No change was made in the provisions for education except the addition of the mandate that the General Assembly should provide adequately for the state university and the system of state normal schools.

Scope of Legislative Authority in Illinois

It is commonly held that the legislature, allowing for the restrictions imposed by the federal Constitution, can exercise all power not denied it by the state constitution. Cooley's statement is that the state constitution confers "legislative powers," and that this means all power not denied by constitutional texts. Cooley writes as follows:

¹"The Proposed New Constitution," Illinois Blue Book, pp. 293-314. Springfield: Illinois State Journal Co., State Printers, 1923.

In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specifically defined legislative powers but is entrusted with the general authority to make laws at discretion.¹

The Illinois Supreme Court's attitude on the province of authority of the General Assembly is pertinent here. In an important case the Supreme Court affirmed: "The constitution of the state is not to be regarded as a grant of power but rather as a restriction upon the powers of the legislature; and it is competent for the legislature to exercise all powers not forbidden by that instrument, not delegated to the general government, nor prohibited to the state by the Constitution of the United States."² Mr. Justice Scates in delivering the opinion in a slightly later case spoke in this strong manner:

A different rule obtains in interpreting the powers in the constitutions of the United States and the states. In ascertaining the powers of the former, we examine to see what powers are expressly granted, or are necessarily implied for their exercise. In the latter we only examine to see what are denied by the federal and state constitutions. And my view of the law-making power of these state governments is, that they can do any legislative act not prohibited by the constitutions; and without and beyond these limitations and restrictions they are as absolute, omnipotent, and uncontrollable as parliament.³

The Constitution of Illinois, adopted in 1870, included the mandate, Section 1 of Article VIII: "The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." An examination of the debates of the Constitutional Convention reveals that many delegates believed that the General Assembly was to be empowered to establish a system of schools to include only the elementary grades.⁴ The Supreme

¹Thomas M. Cooley, Constitutional Limitations (6th ed.), p. 104. Boston: Little, Brown & Co., 1890.

²Sawyer v. City of Alton, 3 Scammon (4 Ill.), 127.

³Mason v. Wait et al, 4 Scammon (5 Ill.), 127.

⁴Debates of the Constitutional Convention of 1870 (State of Illinois), II, 1723-35. Springfield: E.S. Merritt & Brother.

Court in a short time, however, declared the Township High School Law of 1872 constitutional because Section 1 of Article VIII did not define a common school education. The court, in rendering its decision in the case of Richards v. Raymond, said:

But the argument is that the school established is not a common school or a school where the children of the state may receive a good common school education, and hence inhibited by the constitution. No definition of a common school is given or specified in the constitution, nor does that instrument declare what course of studies shall constitute a common school education. How can it be said that a high school is prohibited by the constitution and not included within the definition of a common school? The phrase, "A common school education" is one not easily defined. One might say that a student instructed in reading, writing, geography, English grammar, and arithmetic had received a common school education, while another who had more enlarged notions on the subject might insist that history, natural philosophy, and algebra should be included. It would thus be almost impossible to find two persons who would in all respects agree in regard to what constituted a common school education.¹

The court further said, "The opposition between the law and the constitution must be clear and strong in the judgment of the court, otherwise it cannot pronounce the law to be void."²

Constitutional Restrictions upon the Formulation and Execution of Educational Policy in Illinois

The constitutional restrictions upon the formulation and execution of educational policy in Illinois pertain to:

1. The character of the schools.
2. The State Superintendent of Public Instruction.
3. The county superintendent of schools.
4. Appropriations from public funds for sectarian purposes.
5. The administration of property donated, granted, or received for educational purposes.
6. Participation of teacher or school officer in the profits from the sale of books or apparatus in the school with which teacher or officer is affiliated.
7. Local or special laws for the management of schools.
8. Financial support of schools.

It is the purpose of this section of the chapter to treat the

¹92 Ill. 612.

²Ibid.

constitutional restrictions in an expository manner. The decisions of the Supreme Court will be drawn on in every instance possible.

The character of the schools.--The most quoted educational provision in the Constitution is Section 1 of Article VIII, which is as follows: "The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of the state may receive a good common school education." This provision constitutes both a mandate and a limitation of power. It is a mandate in that the General Assembly shall provide a system of schools that is thorough and efficient and a restriction in that the schools provided shall be free and open equally to all children. The Supreme Court in the case of Powell v. Board of Education said:

This section of the constitution is mandatory, and, at the same time, it is a limitation upon the power of the General Assembly. So far as it makes it the duty of the legislature to establish "a thorough and efficient system of free schools," it is mandatory. But the latter clause of the section is a limitation upon the power of the legislature as to the character of education to be afforded by the system of free schools to be established and maintained. It is not a grant of power, as was said in Richards v. Raymond, 92 Ill. 612, for the General Assembly needed no grant of power to enable it to enact any laws that might be deemed necessary to advance the welfare of the people of the State. It is apprehended, if it were not for the limitations contained in the section cited, and also in the third section of the same article of the constitution, the legislature might enact any law deemed most beneficial to the people of the State, on the subject of schools and general education. But those sections fix limits in two particulars beyond which the legislature may not go, and of course all inhibited legislation on the subject of education would be void.

Observing the constitutional restriction, the General Assembly can only establish a "system of free schools" that will afford "a good common school education." But what is "a common school education?" As the constitution is silent on the subject, it is evidently left to the wisdom of the General Assembly to declare what would constitute such an education.¹

The Supreme Court interpreted Section 1 of Article VIII in the case of Fielder v. Eckfeldt as recently as 1929 in this manner:

This was a command addressed to the legislature, and it

¹97 Ill. 375.

has been construed as a limitation also on its power to provide for the maintenance by local taxation of free schools of a different character from that named in the section. It was not a grant of power, for the legislature has the inherent power to enact all laws proper for the government or welfare of the people of the State nor prohibited by the constitution of the United States or of this State. (*Richards v. Raymond*, 92 Ill. 612.) The legislature gets no greater power from the command. When we look for the limitations on that power, we find these two, and these two only, which the courts can enforce: that the schools shall be free, and that they shall be open to all equally. The court has enforced these limitations when the occasion requiring the enforcement of them arose. (*People v. Board of Education*, 101 Ill. 308; *People v. Mayor of Alton*, 193 id. 309; *People v. Moore*, 240 id. 408.) There are no others to which the judicial powers extend.

The command of the constitution is addressed to the General Assembly alone. It was not a self-executing provision but required legislation to give it effect, and the responsibility and duty of providing the system and the means and agencies by which it should be made effective rest upon the General Assembly alone.¹

The two restrictions on the General Assembly's power to provide for a system of schools are that the schools established shall be free and open equally to all children. School officers cannot deny an individual, between the ages of six and twenty-one, admission to the public schools because of nationality, religion, color, or economic status.² There is no discretion vested in school officers or elsewhere to disturb the equality of all children before the law.³

The purpose of this system of schools is to provide an opportunity whereby all the children of the state may receive a good common school education. The attempt to achieve this purpose has necessitated a definition of the common school. The Supreme Court in a number of cases has defined the common school to include the high school.⁴ A common school education, accord-

¹335 Ill. 11.

²*Chase v. Stephenson*, 71 Ill. 385.
People v. Board of Education of Quincy, 101 Ill. 308.
People v. Board of Education of Upper Alton, 127 Ill. 625.
People v. Weis, 275 Ill. 581.

³*People v. Mayor of Alton*, 193 Ill. 315.

⁴*Richards - Raymond*, 92 Ill. 612.
Russel v. High School Board, 212 Ill. 327.
People v. High School Board, 212 Ill. 327.
Cooks v. School Board, 266 Ill. 164.
People v. Young, 309 Ill. 27.

ing to judicial interpretation thus far, therefore, connotes, quantitatively speaking, graduation from high school or its equivalent. It should be pointed out, however, that the Supreme Court has not set the upper limit of the common school. The Junior college has not to date appeared in the courts.

The state superintendent of public instruction.--The Constitution provides that there shall be a State Superintendent of Public Instruction who shall be elected every four years by popular vote. The duties imposed on him by the Constitution are that he shall reside at the seat of government during his term of office; keep the public records, books, and papers there; make a biennial report to the Governor; and perform such duties as may be prescribed by law.

Perhaps the most significant restriction upon the legislative development of state educational policy is the constitutional mandate requiring that the State Superintendent be elected by popular vote. This restriction precludes the possibility of legislative creation of a state system of education wholly acceptable to the best authorities on state school administration. It is widely held that the machinery for effective state educational administration should consist, first of all, of a non-partisan state board of education endowed with power to appoint the Superintendent of Public Instruction. The General Assembly in Illinois, under the present constitutional restrictions, can create a state board of education, but not with the power to select a Superintendent of Public Instruction. A recent study contains this conclusion: "In view of the current opinion of authorities in the field of school administration, which favors the appointment of this officer by the state board of education, it would seem that state constitutional provisions for the elective method are a handicap in securing the highest type of professional service."¹

The county superintendent of schools.--The constitutional provision for the office of the county superintendent of schools is discretionary in character. Section 5 of Article VIII of the Constitution is as follows: "There may be a County Superintendent of Schools in each county whose qualifications, powers, duties,

¹John Mathiason Matzen, "State Constitutional Provisions for Education," p. 58. Doctor's thesis, Teachers College, Columbia University, 1931.

compensation, and time and manner of election and term of office shall be prescribed by law." The General Assembly has prescribed the qualifications, powers, duties, and compensation of the county superintendent. It has also prescribed his term of office and, significantly, the manner of election to be by popular vote. No case involving the manner of election of the county superintendent as the issue to be ruled upon has been reviewed by the Supreme Court, but there is a strong possibility that the court would interpret this provision of the constitution to mean election by popular vote. The case of People v. English is related to this question, however.¹ Even though the issue in this case was whether women were authorized by statute to vote for the county superintendent of schools, the Supreme Court said:

It is thus perceived that mention is made in the constitution, of the county superintendent of schools, and that it is indicated therein that he or she is to be selected at an "election." We think that the word "manner" found in section 5 of article 8 of the constitution should receive like interpretation with that placed upon the same word found in article 5 and 10 of the same instrument, and that said word in article 5 indicates merely that the legislature may provide by law the usual, ordinary or necessary details required for the holding of the election.

Article V defines the manner of election of state officials and Article X, the manner of election of local officials. In each case the election is by popular vote. The "manner of election" phrase of Section 5 of Article VIII, therefore, possibly restrains the General Assembly in the creation of a county board of education with adequate powers. It may be presumed, however, that if the word selection were used in the place of the word election, the General Assembly could safely create a county board with power to choose the county superintendent.

Appropriations for sectarian purposes.--The General Assembly or a public corporation is prohibited from appropriating public funds for the aid of any church or educational institution of sectarian character. Section 3 of Article VIII also prohibits the state or any public corporation from making grants of land, money, or other property to any church or for any sectarian purpose. In other words, it would appear that sectarian institutions of all types cannot be the recipients of public funds or property

¹139 Ill. 622.

for any purpose.

Several cases involving this restriction have been appealed to the Supreme Court of the state. The court ruled in the case of The County of Cook v. The Chicago Industrial School for Girls that the county could not legally compensate a sectarian institution for services (lodging, instruction, etc.) rendered dependent girls. The Chicago Industrial School for Girls was under the control of the Catholic church. It was shown that two Catholic orphanages had provided the care for the dependent girls committed to the industrial school by the county court. The industrial school to which dependent girls had been committed by authority of "An Act to Aid Industrial Schools for Girls" had not even erected a building or provided the proper training at the time the dispute between the Board of Commissioners of Cook County and the industrial school authorities arose. The Supreme Court interpreted the compensating of the Chicago Industrial School for Girls for services rendered dependent girls in this case as aiding a sectarian institution with public funds. The court said:

If they [industrial schools] are entitled to be paid out of the public funds even though they are under the control of sectarian denominations simply because they relieve the State of a burden, which it would otherwise be itself required to bear, then there is nothing to prevent all public education from becoming subjected, by hasty and unwise legislation, to sectarian influences. By section 1 of article 8 of the constitution it is made the duty of the State to provide a thorough and efficient system of free schools. If statutes are passed, under which the management of these schools shall get into the hands of sectarian institutions, then, under the theory contended for, the prohibition of the constitution will be powerless to prevent the money of the tax-payers from being used to support such institutions inasmuch as they will render a service to the state by performing for it its duty of educating the children of the people. It is an untenable position, that public funds may be paid out to help support sectarian schools provided only such schools shall render a quid pro quo for the payments made to them. The constitution declares against the use of public funds to aid sectarian schools independently of the question whether there is or is not a consideration furnished in return for the funds so used.

The court further said:

There is nothing in the doctrine here announced which conflicts with the case of Millard v. Board of Education, 121 Ill. 297. There the proceeding was by an individual taxpayer against a Board of Education, and a majority of the Court sustained the act of the Board, which has no school-house, in temporarily leasing the basement of a Catholic Church for the purpose of holding one of the public schools

therein. But the Board did not part with its control of the school. The scholars were taught by teachers, whom the Board appointed, and under a system of instruction, which the Board prescribed.¹

In the later case the Supreme Court decided that compensating the Chicago Industrial School for Girls for rendering service to dependent girls from public funds was not violative of the Constitution. In this instance, however, the Chicago Industrial School for Girls was not simply a paper entity as before. Also, evidence was shown that appropriate training was provided at less than actual cost and that all the teachers at that time were not even members of the Catholic church. Moreover, the court introduced the constitutional guarantee of the right to worship in this opinion. The court said:

Not only have the people, by the constitution and by their representatives in the General Assembly, recognized and provided for the enjoyment of religious liberty, but the court has not adopted any rule antagonistic thereto. In *Nichols v. School Directors*, 93 Ill. 61, the court said: "Religion and religious worship are not so placed under the ban of the constitution that they may not be allowed to become the recipients of any incidental benefit whatsoever from the public bodies or authorities of the State." In *Millard v. Board of Education*, 121 Ill. 297, where the authority of a board of education to lease the basement of a Catholic church and pay rent therefor was questioned and an injunction sought, the court said that if it became necessary for a board of education to procure a building to be used for school purposes it had a right to rent from any person who had property suitable for school purposes, and whether the owner of the property was a Methodist, a Presbyterian, a Roman Catholic or of any other denomination was a matter of no moment,--which is applicable to this case, where the care and education of girls as wards of the State are required and payment must be made therefor. . . . It would be contrary to the letter and spirit of the constitution to exclude from religious exercises the members of any denomination when the State assumes their control or to prevent the children of members from receiving the religious instruction which they would have received at home. The constitutional prohibition against furnishing aid or preference to any church or sect is to be rigidly enforced, but it is contrary to fact and reason to say that paying less than the actual cost of clothing, medical care and attention, education and training in useful arts and domestic sciences, is aiding the institution where such things are furnished.²

The decisions of the Supreme Court in later cases similar to the

¹125 Ill. 540.

²St. Hedwig's School v. Cook County, 289 Ill. 504.

second case in which the Chicago Industrial School for Girls was involved are in agreement with the opinion handed down in that case.¹ The weight of judicial opinion therefore sustains the compensating of schools under sectarian control from public funds for services rendered wards of the state. Also, public school authorities may rent buildings for school purposes from institutions under sectarian control without violating the Constitution.

A few cases involving the authority of boards of education to permit Bible reading and other forms of worship in the public schools have been appealed to the Supreme Court. It was held by the Court in the case of North v. Trustees of the University of Illinois that a rule of the university requiring all students who had not been excused to attend chapel services, where the New Testament was read, the Lord's Prayer recited, and religious hymns sung, was not prohibited by the Constitution.² The saying of the Angelus prayer by teacher and pupils at the closing of school was not held unlawful in the case of Millard v. Board of Education.³ In the case of the People v. Board of Education, the dissenting opinion rendered by Justices Hand and Cartwright sustained the rule of a board of education permitting the reading of the Bible without comment, the singing of hymns, and the reciting of the Lord's Prayer.⁴ The majority opinion in the case of The People v. Board of Education, however, did not hold the reading of the Bible in any sense and other familiar forms of worship in the public school to be lawful. The court held as follows:

Where the Lord's prayer is recited in concert, under the direction of the teachers, during which pupils are required to rise in their seats, bow their heads and fold their hands; where teachers employed in the public schools, during school hours, read to the pupils portions of King James' version of the Bible; and sing sacred hymns, one of which is "Grace Enough for Me" there is religious worship and sectarian instruction, and compelling pupils to take part in such exercise violates the constitutional guaranty of the free exercise and enjoyment of religious worship.⁵

It would seem, generalizing on the Supreme Court decisions relating to the constitutional prohibition of sectarianism in the

352. ¹Dunn v. Addison Manual Training School for Boys, 281 Ill.

Trost v. Ketteler Manual Training School, 282 Ill. 504.

²137 Ill. 296.

³121 Ill. 297.

⁴245 Ill. 334.

⁵Ibid.

public schools, that the General Assembly or a school district is prohibited from appropriating funds for tuition in a sectarian school, especially if some type of service such as care of dependent children is not rendered by the institution; also, that Bible reading with critical comments in the school is prohibited.

The administration of property granted for school purposes.--Widespread criticism of the management of school lands and funds appeared early in the state's history. The proposed Constitution of 1862 contained, therefore, a prohibition regarding the disposition of school funds or property. The Constitutional Convention of 1870 was aware of a persisting antagonism to the methods of administering school lands and funds. Hence, the prohibition in the present Constitution is written in stronger language than is found in the proposed Constitution of 1862. It is as follows: "All lands, money, or other property, donated, granted, or received for school, college, seminary, or university purposes, and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made."

It is pertinent here to note the Supreme Court's interpretation of Section 2 of Article VIII, with emphasis on "faithfully applied." In the case of City of Chicago v. Tribune Co., it was held that the sale or lease of school lands under legislative authority is not, of itself, a diversion of the land from its purpose.¹ But the court ruled that the increment in value of property as related to rental fees is not without consideration--that is, the rental fee should increase with the increment in the value of the property as based upon periodical re-valuations. In other words, the court said that the Chicago Board of Education was entitled to a just return from its leased school lands and that other than a fair return would not be the faithful application of the school lands to the object for which they were granted.

School property or school lands held in trust are exempt from special assessments, as well as from general taxation. The property may be sold or it may be rented, the proceeds to be used for school purposes, but no authority is conferred upon any one to improve it. The Supreme Court said in two cases that school property should not be exposed to the danger of being

¹248 Ill. 242.

made to pay for the supposed benefits conferred upon it by improvements.¹ Fair return on property either from sale or from rentals appears to be the chief restriction on the administration of school property or school loans. Speculation on school property is prohibited. Preservation of unsold school land and reasonable proceeds from rental or sale if devoted to school purposes, therefore, constitute the meaning of "the faithful application" of school land to the object for which such land was granted.

Profits from school supplies.--Section 4 of Article VIII of the Constitution is as follows: "No teacher, state, county, township, or district school officer shall be interested in the sale, proceeds, or profits of any book, apparatus, or furniture used, or to be used, in any school, in this state, with which such officer or teacher may be connected, under such penalties as may be provided by the General Assembly." This provision is self-executing, except as penalties may be imposed by the General Assembly. The Supreme Court said in the case of Law v. People that all negative or prohibitory provisions found in a constitution execute themselves, making void all acts done in violation of such provisions, the same as if in violation of express statutory law.² This provision is not a restriction on the organization of the schools. It only restrains individuals in their business relations to the administration of the schools with which such individuals are affiliated. Parenthetically, it may be said that there was considerable sentiment in favor of the elimination of this provision in the Constitutional Conventions of 1870 and 1920-1922, on the ground that it was more statutory than fundamental in character.³ Few state constitutions contain a similar provision.

Local or special laws for the management of schools.--The Constitution prohibits the General Assembly from enacting local or special laws respecting the organization and administra-

¹People v. Trustees of Schools, 118 Ill. 55.
City of Chicago v. People, 80 Ill. 384.

²87 Ill. 385.

³Debates of the Constitutional Convention of 1870, II, 1735-37. Debates of the Constitutional Convention of 1922, I, 500. Springfield: Illinois State Journal Co.

tion of the public schools.¹ An example of legislation violative of this constitutional provision is the Township High School Act of 1911. This act permitted a township containing a school district with a population between 1,000 and 100,000 inhabitants to be organized into a high school district. An adjoining township of the same population and the same taxable wealth, if it did not contain a school district with the population between 1,000 and 100,000 inhabitants, would not be entitled to organize into a township high school district. The Supreme Court in the case of People v. Weis declared this law unconstitutional because it was special legislation.² The court said that the General Assembly had conferred a special privilege upon school districts of a certain classification not based upon real distinctions.

The court said in a case as recent as 1931, that a classification based upon population must be reasonable and have a proper relation to the objects and purposes of the legislation, and the law must apply equally to all members of the designated class.³ The court ruled as in the case of People v. Weis that a classification will suffice as a basis for legislation only where it is based upon a rational difference of situation or condition found to exist in the persons or objects upon which the classification rests. Judicial opinion respecting special legislation is consistent. The General Assembly is restrained from conferring educational privilege upon unreasonable classifications of persons or corporations.

Financial support of schools.--The constitutional restrictions upon the General Assembly's power to provide revenue for needful purposes are defined in Article IX. The limitations most pertinent here are included in Sections 1, 3, 9, and 12. Sections 1 and 9 state that all property shall be taxed by valuation and in a uniform manner. Section 1 in part is as follows: "The General Assembly shall provide such revenue as may be helpful, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its

¹Sec. 22, Article IV.

²275 Ill. 581.

³The People v. Read, 344 Ill. 397.

property." Section 9 in part is as follows: ". . . . all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." Section 8 provides that property used for school purposes may be exempted from taxation. Section 12 enforces a debt limitation on school districts.

The Income Tax law enacted by the General Assembly in 1923 soon declared unconstitutional by the Supreme Court serves as an illustration of the restraining aspect of Section 1 of the Revenue Article. The court, in the case of Bachrach v. Nelson, ruled that the Income Tax law of 1923 was invalid because it did not levy taxes on property according to valuation and was not uniform in its operation. Income is interpreted to mean "property," and therefore a graduated tax on income is prohibited. The court said:

As heretofore shown, the word "property" as used in our constitution includes income, and income is "property." Therefore, it necessarily follows that under the constitution of this State, all taxes must be levied on property by valuation, so that every person and corporation shall pay a tax in proportion to the valuation of his or its property. The 1923 Income Tax law is an attempt to levy a tax upon property (income) by means of a graduated scale that increased in rate as applied to increases from property and personal earnings. It, therefore, violates the constitutional provision that all taxes must be levied on property according to valuation. It is not uniform in its operation and does not equalize the burden of taxation, as required by the constitution. It is a proposed tax on property by graduation rather than by valuation. Whether this law would be desirable from an economic standpoint or as a matter of public policy is something of which this court can take no cognizance, as we are clothed with the power and primarily entrusted with the duty of maintaining the fundamental law of the constitution, which in its present form confers no legislative authority for the enactment of the proposed graduated Income Tax act.¹

The two Sales Tax laws of 1933, the first of which was declared unconstitutional and the second constitutional, involve, especially, the restriction of uniformity of taxes. The first Sales Tax law exempted farm produce when sold by the producer at retail. It also exempted motor fuel. The Supreme Court ruled in the case of Winder v. Barrett that the granting of exemptions

¹349 Ill. 579.

constituted a violation of the uniformity provision of the Constitution.¹ The General Assembly then enacted a Retailer's Occupational Tax law without exemptions, or in essence a general sales tax. This tax was upheld in the case of Reif v. Barrett.²

The Constitution grants authority to the General Assembly to exempt from taxation property used for educational purposes. The Supreme Court held in the case of Consolidated Coal Company v. Miller that any exemption, except in the case of property used exclusively for agricultural and horticultural societies, for school, religious, cemetery, or charitable purposes, is absolutely prohibited.³

The last constitutional restriction of a financial character to be treated here is the debt limitation clause which applies to school districts. The debt of the school district for any purpose is not allowed to exceed, including existing indebtedness, five per centum on the value of the taxable property in the district, as ascertained by the last assessment for state and county purposes. The school district, before contracting a debt, shall provide for the collection of a direct annual tax sufficient to pay the interest on the debt as it falls due, and to pay the principal within twenty years from the date of contracting the debt.

The foregoing provision has not required numerous rulings by the courts. The issuance of anticipation tax warrants as related to the debt limitation restriction has appeared, however, in the courts for interpretation.

The Supreme Court said in the case of The People v. Toledo, Peoria and Western Railway Company that the meaning of the debt limitation restriction was too plain for argument.⁴ This case involved a school district in Livingston County, which, after an election was held authorizing the board of education to erect a new school building and to issue bonds to the amount of \$25,000 to meet its cost, found that because of the debt limitation section of Article IX of the Constitution, it could legally issue bonds only to the amount of \$8,561.55. A second election was held to authorize the issuance of bonds to the amount of \$8,500.

¹352 Ill. 441.

²355 Ill. 104.

³236 Ill. 149.

⁴229 Ill. 327.

The board of education then sold warrants to provide the \$17,500 necessary for the completion of the building.

The Toledo, Peoria and Western Railway Company refused to pay the taxes levied to apply on the indebtedness represented by the warrants, because the levy was made to pay indebtedness in excess of the limit authorized by the constitution. The railroad company filed an objection in the circuit court and was sustained. The case was then appealed to the Supreme Court which ruled that a tax levied to pay the warrants issued was invalid. This ruling, however, does not prevent the issuance of warrants for current expenses, provided taxes have been levied to issue funds to liquidate the warrants.

Comparison with other states.--It was pointed out in a previous section of this chapter that the power of the legislature is plenary except as it is restrained by the federal and the state constitutions. The General Assembly in Illinois has been left free in some measure, as contrasted with other states, to develop educational policy.

Lide writes of educational provisions in state constitutions as follows: "It seems that there is a tendency for states early admitted to the Union (most commonly appearing in the East and the South) not only to have few provisions in their early constitutions, but to add relatively few provisions, as compared with the middle western and western states, with the advance of years."¹ Lide states that the average number of provisions for eleven eastern states is 3.5; thirteen southern states, 9.3; eleven middle western states, 9.8; and thirteen western states, 14.6.² It may be concluded from Lide's finding, and from the evidence presented in this study, that Illinois should be classified as falling between the two extremes, that is, states in which the legislature has been left free in a large measure to develop educational policy and states in which the legislature has been left free in a small measure to develop educational policy.

¹Edwin S. Lide, Constitutional Basis of Public School Education, p. 3. Leaflet #40, U. S. Office of Education, 1931.

²Ibid.

CHAPTER III

THEORY OF PUBLIC EDUCATION IN ILLINOIS

Introduction

The fact that there is a legal basis of schools in each of the several states suggests that there is a theory motivating the states, otherwise the governments of the states would assume no responsibility for schools. The state of Illinois is interested in the education of all its children.¹

Statements Relating to a Theory of Education in Illinois

Relation of mass intelligence and virtue to the political system.--The first official pronouncement on education made after Illinois came into statehood to be found was included in Governor Edward Coles' message to the General Assembly in November, 1822. Governor Coles made the following recommendation in which he said that the political system could not be preserved without the cultivation of mass intelligence and virtue:

Whilst we bestow these just praises on the political system under which we live, it is one of our first duties to keep in mind that its preservation can be no otherwise secured than by cultivating in the mass of society that intelligence and virtue on which such a system rests. There is no recommendation, therefore, more due from my station than that of a competent provision for the education of the rising and succeeding generations in the several branches of useful knowledge and for maintaining the public morals in their purity and I trust that the subject will be thought by the legislature to merit all the attention which I ask for it.²

Enlightenment and the enjoyment of political freedom.--The General Assembly of Illinois, as early as 1825, passed a general school law which contained a very significant statement as

¹Logsdon v. Jones, 311 Ill. 425.

²Journal of the Senate, Third General Assembly (State of Illinois), pp. 20-21. Vandalia: Blackwell & Berry, Printers, 1822.

a preamble. This statement was written by a disciple of Thomas Jefferson. It was as follows: "To enjoy our rights and liberties, we must understand them; their security and protection ought to be the first object of a free people; and it is a well-established fact that no nation has ever continued long in the enjoyment of civil and political freedom, which was not both virtuous and enlightened; and believing that the advancement of literature always has been, and ever will be the means of developing more fully the rights of men, and that the mind of every citizen in a republic is the common property of society, and constitutes the basis of its strength and happiness, it is, therefore, considered the peculiar duty of a free government like ours to encourage and extend the improvement and cultivation of the intellectual energies of the whole."¹ Again it is stated that enlightenment and virtue are essential to the maintenance of political freedom. Attention is called to the statement that the mind of every citizen in a republic is the common property of society.

Individual and social necessity of education.--Abraham Lincoln, according to the best authorities on his life and public service, gave from time to time most unusual evidences of keen social insights. He wrote and spoke of the individual and the social necessity of education.²

In the case of Lee v. Board of Education, the Supreme Court of Illinois defined the purpose of the maintenance of the common schools to be the promotion of the general intelligence of the people, which it was believed, if achieved, would increase the usefulness and efficiency of individual citizens. Moreover, it was stated by the court that government depended upon an intelligent citizenry. The court said: "The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting a body politic, and thereby to increase the usefulness and efficiency of the citizens, on which the Government of society depends."³

¹Laws of Illinois, 1824, p. 121.

²J. G. de Rouhae Hamilton, Selections from the Writings of Abraham Lincoln, p. 44. Chicago: Scott, Foresman & Co., 1922.

³234 Ill., App. 141.

Moral claim of every child and obligation of the state.--
Newton Bateman, State Superintendent of Public Instruction for twelve years, in transmitting the third biennial report of the Department of Public Instruction to the Governor in 1861 said:

The principles on which our system of Public Instruction is based are: The just moral claim of every child in the Commonwealth to an education commensurate with the importance and dignity of his obligations and duties as an upright and loyal citizen; the corresponding obligation of the State to make adequate provision for such an education for all; the inseparable relation of universal intelligence and probity to the strength and perpetuity of a republican government.¹

Maintenance of schools--a function of government.--The Supreme Court of Illinois in the case of Scown v. Czarnecki defined the relation of the state to the schools in that the state does not support schools from philanthropic or charitable motives, but from the motives of protection, safety, and welfare of the citizen in the interest of good government. The court affirmed that the conduct and maintenance of schools is a function of government in the same sense that the construction and maintenance of roads is a function of government. The court said:

The public school system of the State was not established and has not been maintained as a charity or from philanthropic motives. The first legislative expression in regard to schools in Illinois was in the ordinance of 1787, which declares that: 'Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged.'

This declaration grew, not out of philanthropic motives, but out of a consideration of the essentials of good government. The conduct and maintenance of schools by school directors, school trustees, and boards of education is no less an 'exercise of the functions vested in those charged with the conduct of government,' is no less a part of 'the science and art of government,' and deals no less with 'the organization, the regulation and administration of a state' in its internal affairs, than the construction and maintenance of roads by the commissioners of highways; the conduct and maintenance of the charitable institutions of the state by the board of administration; the inspection of factories; and the enforcement of laws for the protection of workmen and in regard to the employment of women and children, by the factory inspectors; the performance by the industrial board of the duties imposed upon it by law, and the performance of many other duties by public officials, which, however, beneficial

¹Biennial Report of Superintendent of Public Instruction
(State of Illinois), p. 5.

to individuals, are not undertaken from philanthropic or charitable motives, but for the protection, safety, and welfare of the citizens of the state in the interest of good government.¹

Social and Legal Theory of Public Education
in Illinois

If one may be permitted to generalize on the foregoing statements, the state of Illinois assumes the responsibility for schools because it is believed that the very existence of democratically organized society depends on intelligent and socially-minded individuals. The two concepts, "individual efficiency" and "social efficiency," which may be said to constitute a social theory of education, characterize the foregoing statements defining the relation of the state to the school. It should be said, to generalize further, that the ultimate end of education, in legal theory, is the welfare of the citizens of the state in the interest of good government or the state itself. The state is vitally interested in its own preservation and, therefore, as a governmental function, promotes schools as one of the means to this end.

¹264 Ill. 305.

CHAPTER IV STATE AGENCIES FOR EDUCATIONAL CONTROL

Introduction

The state has created certain agencies to put into effect its educational policies, among which of state-wide jurisdiction are the Office of the Superintendent of Public Instruction, the Normal School Board, the Board of Trustees of the University of Illinois, and the Board for Vocational Education. These agencies are creations of the Constitutional Convention of 1870 and the General Assembly for purposes of state school administration and supervision, as contrasted with the township treasurer and the school directors, also creations of the state, but for purposes of local school administration. It is proposed to treat the legal basis of each one of these agencies in this chapter.

Evolution of the State Superintendent of Public Instruction

Early in the history of Illinois the General Assembly came to see the need of some sort of state supervision of the common schools. The Auditor of Public Accounts was the forerunner of the Superintendent of Public Instruction. In 1837, he was instructed to gather information regarding the common schools to be presented to the General Assembly.¹ The Secretary of State was made ex officio Superintendent of Common Schools in 1845.² Nine years later the General Assembly created the office of Superintendent of Public Instruction.³

Classification of Functions of State Superintendent

The functions of the State Superintendent of Public In-

¹Laws of Illinois, 1837-1838, p. 320.

²Ibid., 1845, p. 497.

³Ibid., 1854, pp. 13-15.

struction may be classified as follows: supervisory, administrative, judicial and advisory, and statistical. Each classification of functions will be illustrated in the following paragraphs. The functions to be mentioned cannot be exhaustive since the detailed aspects of these functions may have only an indirect legal basis.

Supervisory.--Clause 3 of section 3 of the statutes providing for the Superintendent of Public Instruction states that he shall supervise all the common and public schools in the state. This clause is the legal basis for the State Department's supervisory activities, which are best illustrated in the bulletins, "Standards for City Elementary Schools of Illinois",¹ and "The Recognition and Accrediting of Illinois Secondary Schools,"² the latter prepared by the State Superintendent in co-operation with the University of Illinois. It should be pointed out here that the Superintendent is empowered in clause 7 of section 3 of school laws to formulate the regulations necessary to carrying into efficient and uniform effect the provisions of the act to establish and maintain a system of free schools, which, of course, applies to the supervision of schools.

In the bulletin dealing with the elementary schools, the legal basis of the school board is treated; also, its duties and the accepted procedures to be employed in carrying out its duties are explained. The state's requirements regarding the construction of school buildings, the organization of instruction with recommendations of an advisory nature, also auxiliary departments such as health and the census are treated. One chapter in this bulletin explains the legal requirements for the course of study. The last chapter is of miscellaneous nature. It explains the teachers' pension, the school calendar, the legal requirements for board elections, the annual report of the clerk, and the tax levy.

The second bulletin mentioned above explains the policies of the Superintendent of Public Instruction relative to the inspection, recognition, and accrediting of secondary schools. The

¹Superintendent of Public Instruction (State of Illinois), 1934, cir. 278, pp. 1-44.

²University of Illinois Bulletin, Vol. XXXII, #33, 1935, pp. 1-43.

conditions for the recognition and accrediting of secondary schools and the criteria for evaluating secondary schools are outlined in this bulletin. These criteria include standards relative to the school plant, equipment, library, school records, school spirit, preparation of teachers, the teacher load, pupil load, and instruction. This plan of supervision was formulated with the co-operation of the University of Illinois. The inspectors of the State Department work in co-operation with the High School Visitor's Office of the University in supervising the secondary schools. It is true that a recognized high school is defined briefly in the school laws. The definition is as follows: A recognized high school in the meaning of this act is any public high school providing a course of two or more years of work approved by the Superintendent of Public Instruction.¹

The Superintendent of Public Instruction supervises the special training for crippled children, delinquent children, blind and deaf children, and children with defective vision. The statutes provide that the Department of Public Welfare shall not authorize the Auditor of Public Accounts to draw warrants to reimburse local districts for excess cost of these special types of training until such instruction is approved by the Superintendent of Public Instruction.²

Administrative.--An example of the Superintendent's administrative functions is found in clause 10 of section 3 of the statutory provisions for the Superintendent. It is stated that the Superintendent shall grant teachers' certificates, also suspend certificates for immorality or other unprofessional conduct. The certification of teachers in Illinois is very fully defined by law which will be treated in the chapter dealing with the legal status of the teacher. The Superintendent is responsible, however, for the machinery essential for carrying out the statutory regulations relative to the certification of teachers. It may be said that the conditions for granting certificates are more clearly defined by law than the grounds for suspending them. The Superintendent serves as ex officio secretary of the State Normal

¹The School Law of Illinois, 1935, sec. 96, p. 49. Cir. 284, Superintendent of Public Instruction.

²Ibid., pp. 191-95, 151-52.

School Board and as an ex officio member of the Board of Trustees of the University of Illinois. He is also chief executive officer of the State Board for Vocational Education. These boards are treated later in this chapter. He is chairman of the State Examining and the Teachers' Pension Boards, which will also be treated in another chapter.

The State Superintendent may require the Auditor of Public Accounts to withhold from the county superintendent the amount due his county from the state school fund or the said county superintendent for his compensation until the county superintendent shall have presented to the State Superintendent such information relating to the schools in his county as the State Superintendent may require. He may also require the county superintendent and local officers to withhold from any township, district, or officer any part of the common school, township, or other school fund until such officer shall have made all reports required of him by law.

Advisory and judicial.--The State Superintendent may advise county superintendents relative to the best manner of conducting schools, constructing school houses, and securing competent teachers. He issues a monthly bulletin of advisory and informative nature to all schools in the state. He is the legal adviser of school officers. It is his duty, upon request of any school officer, to give his opinion in writing upon any question arising under the school laws, and he is empowered to hear and determine all controversies arising under the school laws, coming to him by appeal from the county superintendents.

It should be pointed out that the General Assembly in 1917 empowered the State Superintendent to change boundary lines of school districts in order to make districts compact and contiguous, and comparatively easy of access to all pupils of the district.¹ In two cases this law was declared unconstitutional by the Supreme Court.² It was held that this power in the hands of the State Superintendent is a delegation of legislative power, and, therefore, in violation of Article 3 of the Constitution.

Statistical.--The State Superintendent is required to

¹Laws of Illinois, 1917, p. 739.

²Jackson v. Blair, 298 Ill. 605.
The People v. Lovellette, 302 Ill. 210.

transmit biennially to the Governor a report containing various statistics regarding the schools, including the number and condition of schools in each county, the number of male and female teachers and of pupils in attendance, the number of persons under twenty-one years of age, and the number of illiterates in each county, the condition of the state and township school funds, the amounts raised by taxation and annually expended for schools; the number, kind, and condition of school houses; the number of townships and parts of townships in each county; the amount and cost of books and apparatus purchased for the use of schools, and the number of district libraries. This report is transmitted to the General Assembly at each regular session. The purpose of this biennial report is to keep the General Assembly informed of the condition of the schools of the state.

Normal School Board

With the enactment of the Civil Administrative Code¹ by the Fiftieth General Assembly (1917), the five boards of trustees in charge of the state normal schools were supplanted by the State Normal School Board, consisting of nine members appointed by the Governor, and two ex officio members--the Director of the Department of Registration and Education, who is designated as chairman of the Board, and the Superintendent of Public Instruction, who is designated as secretary of the Board.

The term of office of the Normal School Board member is six years. Three members are appointed on odd years, therefore providing overlapping terms, the reason for which is continuity of policies.

The General Assembly outlined the duties of the Normal School Board in the Civil Administrative Code as follows:

1. To make rules, regulations and by-laws, not inconsistent with law, for the good government and management of the State normal schools and the various interests therein;
2. To visit each State normal school at least once during each scholastic year for the purpose of making an inspection of its condition and work and gathering such information as will enable them to perform their duties intelligently and effectively;

¹Laws of Illinois, 1917, p. 31.

3. To employ, and, for good cause, remove a president of each State normal school and all necessary professors, teachers, instructors, and other educational assistants and all other necessary employees, and fix their respective salaries;

4. To prescribe the course of study to be followed, and textbooks and apparatus to be used in each State normal school;

5. To issue, upon the recommendation of the faculties of the respective normal schools, diplomas to such persons as shall have satisfactorily completed the required studies of the respective State normal schools, and confer such professional degrees as are usually conferred by other institutions of like character for similar or equivalent courses of study;

6. To examine into the conditions, management, and administration of the State normal schools;

7. To succeed to and to administer all trusts and trust property now or hereafter belonging or pertaining to any of the State normal universities or schools.¹

The Normal School Board has full power to administer the teachers' colleges² with two exceptions. All expenditures must be approved by the Department of Registration and Education and by the Department of Finance, and the purchase of equipment and supplies is made, except in emergencies, by the Department of Public Works and Buildings.³ The Educational Commission of 1925 offered these objections to the present administration of the teachers' colleges:

(1) There is unnecessary and sometimes serious delay in securing apparatus, supplies and equipment; (2) the Department of Registration and Education and the Department of Finance lack that intimate contact with the normal schools which is the necessary basis of sound judgment in passing upon expenditures; (3) the Normal School Board which is charged with the management of these institutions does not have sufficient

¹Ibid.

Smith-Hurd, Revised Statutes of Illinois, 1935, p.3077. Chicago: Burdette Smith Co.

²In 1921, the General Assembly changed the names of the normal schools at Charleston, DeKalb, and Macomb to teachers' colleges. (Laws of Illinois, 1921, pp. 800, 815, and 833.) The names of the institutions at Normal and Carbondale have never been changed.

³Ibid., 1917--Civil Administrative Code, pp. 12-19, 24-25.

Smith-Hurd, op. cit., pp. 3068-3069, 3072-3073, 3076-3077.

control over matters of finance to insure the execution of its policies.¹

The Commission made this recommendation:

That the law be changed so as to provide for a State Board of Education which will have control and supervision of the normal schools of the state. Such a board should be authorized to exercise all the powers necessary for the management of these institutions and should be given complete control over the funds available for their maintenance.²

Board of Trustees of the
University of Illinois

In 1873, the General Assembly, in an act revising the original legislation of 1867, provided significant changes in the method of selection of the Board of Trustees of the University and in the personnel of the Board. The Board became an elective one of nine members, three elected every two years at the general election for a term of six years. These nine members together with the Governor, the President of the State Board of Agriculture, and the Superintendent of Public Instruction constitute the Board of Trustees, which at the present time administers the University. The statute in part as amended in 1887 is as follows:

There shall be elected at the general election to be held in the several precincts and counties of this state on the Tuesday next after the first Monday of November in the year of our Lord one thousand eight hundred and eighty-eight, and at each general election every two years thereafter there shall be elected three trustees of the University of Illinois; and the trustees so elected, together with the Governor, the president of the state board of agriculture, the Superintendent of Public Instruction and those persons who may have been appointed by the Governor to be trustees of said University and whose terms of office shall not have expired, shall constitute the board of trustees of the University of Illinois, and shall succeed to and exercise all the powers conferred by the act entitled "An Act to provide for the organization and maintenance of the Illinois Industrial University," approved February 28, 1867, except as is herein, or may be hereafter, provided by law.

The trustees to be elected as provided in this act, shall be voted for on the same ballots with the state officers to be chosen at such recurring general elections, and the elec-

¹Report of Educational Commission to Governor and Fifty-Fourth General Assembly (State of Illinois), 1925, p. 44.

²Laws of Illinois, 1917, pp. 12-19, 24-26, 45.

tion of said trustees shall be conducted, and the canvass, statement, and return of the votes cast for said trustees shall be made in the same manner, and by the same officers, and shall be governed in every particular by the laws of this state governing a general election. The term of office to be held severally by the trustees so elected, and by their successors, shall be six years from the second Tuesday of March next succeeding the dates of their several elections, and until their successors shall have been elected and qualified: Provided, in case of vacancy in said board such vacancy shall be filled by appointment by the Governor until the next general election. Said board of trustees may appoint an executive committee of three chosen out of the University, and which have the management and control of the University, and of its affairs, and for that purpose shall have, and exercise, all the powers which are necessary and proper for such object, except insofar as the board may reserve such powers to itself and any powers granted at any time by said board in such executive committee, the board may at any time revoke.¹

As indicated above, nine of the trustees of the University are elected by the voters of the state at the biennial general elections. This means their names are on the ballots with the other state officers to be chosen. Admitting this method of selecting officials has given the University able trustees, one may well question whether this is the best possible method of selection. John M. Matthews, Associate in Political Science at the University of Illinois, made this recommendation several years ago:

A change in the method of selecting the members of the board of trustees for the State University should be considered. Even if continued as a body chosen by popular election, the time and manner of election should be changed. In Michigan the regents of the State University and the trustees of the state agricultural college are elected at the biennial April election for judges of the Supreme Court. The trustees of the University of Illinois might be elected at the time of the township and city elections in April; and provision made for non-partisan nominations for those positions.

In most of the states the board of trustees or managing board for the state university is appointed by the Governor, usually with the consent of the senate; and the adoption of this method should also be taken into consideration.²

The General Assembly in the act of 1873 also restated the section

¹Ibid., 1873, p. 18; 1887, p. 306.
Smith-Hurd, op. cit., p. 3196.

²J. M. Matthews, Report on Educational Administration, p. 25. Prepared for the Efficiency and Economy Commission, State of Illinois. Chicago: Windemere Press, 1914.

of the act of 1867 defining in a more simple form the branches of learning to be taught. It was as follows: "All pupils attending the said University of Illinois shall be taught, and shall study, such branches of learning as are related to agriculture and the mechanic arts, and as are adapted to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life, without excluding other scientific and classical studies, and including, for all male students, military tactics."¹

The General Assembly in 1885, changed the name of Illinois Industrial University to the University of Illinois.² The reason for this change was that the institution's program had become too comprehensive to be called an industrial university.

Certain departments or colleges, since the original act was passed, have been established by the General Assembly, namely, Mining Engineering,³ Veterinary College,⁴ Agricultural Experimental Station for Northern Illinois,⁵ and College of Journalism.⁶ It is evident that the Board of Trustees could establish a medical college without authorization by the General Assembly, but not a veterinary college.

The test of the legal basis of the administration of the University is the extent of the approval received from all interests or parties involved. It may be said that in the minds of the great majority of the citizens of the state, the Board of Trustees of the University has carried out its duties in a satisfactory manner.

Board of Vocational Education

The General Assembly in 1919 enacted a law which enumerated the duties of the Board for Vocational Education. The Board was constituted as follows:

There is hereby established the Board for Vocational Education. The Board for Vocational Education shall consist of the Director of Registration and Education, the Superintend-

¹Laws of Illinois, 1873, p. 18.

²Ibid., 1885, p. 252.

³Ibid., 1909, p. 43.

⁴Ibid., 1919, p. 645.

⁵Ibid., 1923, p. 13.

⁶Ibid., 1927, p. 184.

ent of Public Instruction, the Director of Agriculture, the Director of Labor, and the Director of Trade and Commerce.

The Director of Registration and Education shall be the chairman of the Board for Vocational Education, and the Superintendent of Public Instruction shall be its executive officer.

The Director of Registration and Education, the Director of Agriculture, the Director of Labor, the Director of Trade and Commerce, and the Superintendent of Public Instruction, shall serve as members of the Board for Vocational Education during the respective terms of office for which they shall have been appointed or elected, as the case may be.¹

The Board was empowered:

1. To co-operate with the Federal board for vocational education in the administration of the provisions of the Federal Vocational Education Law, to the extent and in the manner therein provided;

2. To promote and aid in the establishment of schools and classes of the types and standards provided for in the plans of the Board for Vocational Education, as approved by the Federal Board for Vocational Education, and to co-operate with State and local school authorities in the maintenance of such schools and classes;

3. To conduct and prepare investigations and studies in relation to vocational education and to publish the results of such investigations and studies;

4. Upon the recommendation of the executive officer, to appoint, without reference to any civil service law which is now or which hereafter may be in force in this State, such technical assistance as may be necessary, and to prescribe their duties, compensation and terms of employment.

5. Upon the recommendation of the executive officer, to appoint without reference to the provisions of any civil service law which is now or which hereafter may be in force in this state, such clerks and stenographers and other employees as may be necessary, and to prescribe their duties, compensation and terms of employment;

6. To promulgate reasonable rules and regulations relating to the enforcement of the provisions of this Act;

7. To report, in writing, to the Governor, annually on or before the first day of December, and at such other times and in such manner and upon such subjects as the Governor may require. The annual report shall contain (1) a statement of the extent to which vocational education has been established and maintained in the State; (2) a statement of the existing

¹Ibid., 1919, p. 928.

Smith-Hurd, op. cit., 1935, p. 3048.

conditions of vocational education in the State; (3) a statement of suggestions and recommendations with reference to the development of vocational education in the State; and (4) an itemized statement of the amounts of money received from federal and State sources, and of the objects and purposes to which the respective items of these several amounts have been devoted; and

8. To make such reports to the Federal Board for Vocational Education as may be required by the provisions of the Federal Vocational Education Law, and by the rules and regulations of the Federal Board for Vocational Education.¹

According to the most recent report of the Board for Vocational Education, during the year 1933-1934, the Board allotted \$423,762.54 in state and federal funds to secondary schools conducting vocational courses.² For the year 1933-1934, the total number of pupils enrolled in vocational classes under the supervision of the Board for Vocational Education was 30,217.

Vocational rehabilitation.--Another division of the work of the Board for Vocational Education is vocational rehabilitation. In 1920, the Congress passed the Federal Vocational Rehabilitation Act which has for its purpose the rehabilitation of persons injured in industry or otherwise. The General Assembly accepted the provisions and benefits of this act of the Congress and in 1923 defined "persons disabled" as follows: "Any person who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, is, or may be expected to be totally or partially incapacitated for remunerative occupation; the term rehabilitation means the rendering of a person disabled, fit to engage in a remuneration occupation."³

The Board for Vocational Education was designated by the General Assembly as the agency to carry out the provisions and purposes of the Federal Vocational Rehabilitation Act. Its statutory duties are:

1. To co-operate with the Federal board for vocational education in the administration of the provisions of the Federal Vocational Rehabilitation Act;

¹Ibid.

²Board for Vocational Education (State of Illinois), Bulletin 62, pp. 5, 14, 24, 32.

³Laws of Illinois, 1919, p. 534.
Smith-Hurd, op. cit., p. 330.

2. To prescribe and supervise such courses of vocational training as may be necessary for the vocational rehabilitation of persons disabled, and to co-operate with State and local school authorities and other recognized agencies engaged in vocational education and rehabilitation;

3. To formulate a plan of co-operation with the industrial commission in carrying out the provisions of this Act, which plan shall become effective when approved by the Governor;

4. To make such reports and submit such plans to the Federal board for vocational education as are required by the provisions of the Federal Rehabilitation Act, and by the rules and regulations of such Federal board; and

5. To report in writing, to the Governor, annually, on or before the first day of December, and at such other times and in such manner and upon such subjects as the Governor may require. The annual report shall contain (1) a statement of the existing condition of vocational rehabilitation in the State; (2) a statement of suggestions and recommendations with reference to the development of vocational rehabilitation in the State; and (3) an itemized statement of the amounts of money received from Federal, State and other sources, and of the objects and purposes to which the respective items of these several amounts have been devoted. (As amended by an Act approved June 25, 1923.)¹

According to the latest report of the Division of Rehabilitation, the total amount of federal and state funds expended for all purposes for the year ending June 30, 1934, was \$191,155.62.² The number of cases that received attention during this year, 1933-1934, was 446, of which 207 were rehabilitated with training.

Continuation schools.--It was provided by law in 1919 that school districts should be permitted to establish part-time or continuation schools.³ The State Board for Vocational Education was empowered to supervise the continuation schools. No significant changes have been made in the law since its original enactment.⁴

The essential aspects of the continuation school law are as follows:

1. In the district establishing part-time classes there shall be at least twenty minors between the ages of fourteen

¹Ibid.

²Biennial Report of the Superintendent of Public Instruction, 1933-1934, pp. 362-65.

³Laws of Illinois, 1919, pp. 919-21.

⁴The School Law, op. cit., pp. 189-91.

and eighteen years who are not in regular attendance in the five-day week school.

2. Such schools or classes shall be established and administered by the authorities of the public schools of the district.

3. The school year shall be the same as the regular school year.

4. Attendance shall not be less than eight hours each week for at least thirty-six weeks for a school year.

5. The classes shall provide instruction in the subjects usually taught in the public schools, in subjects of civic and vocational nature, and in subjects which supplement the daily occupations of the pupils.

6. Any person, firm or corporation, employing a minor between the ages of fourteen and eighteen years shall permit such minor to attend the classes provided by the school district and as required by law.

7. The State Board for Vocational Education shall establish standards for the maintenance of such schools, also inspect and supervise such schools.

8. The State Board for Vocational Education shall reimburse the school district to an amount not less than one-half the salaries of the teachers of such part-time classes.¹

Considerable progress toward centralization of supervision as applied to the chief state school office was made from 1845 to 1872. This trend has been retarded, however, for several decades. The Normal School Board, the Board of Trustees of the University, and the Board for Vocational Education, however, indicate a more recent centralizing trend in the evolution of the administration and supervision of public education in Illinois.

¹Annual Report of Board for Vocational Education, 1935
(State of Illinois), Bulletin 65, p. 31.

CHAPTER V THE SCHOOL DISTRICT

Introduction

The district is the primary and fundamental unit of school administration in Illinois. The spirit of localism has dominated school organization and administration from the beginning of schools in this state down to the present time. The General Assembly has bestowed vast powers upon local school officers. The district, except certain special charter districts, is independent of almost every local authority. There were in 1934 (latest report) 11,990 school districts in Illinois.¹ Moreover, it is estimated that there are approximately 45,000 lay school officers. It is proposed in this chapter to treat the evolution of the school district, the legal nature of the school district, the types of school districts, and the consolidation of school districts.

Evolution of School District

An examination of the early statutes reveals that the General Assembly in 1820, two years after Illinois was admitted to statehood, established the first school district at Alton.² Alton was the first community in which authorization for levying a tax to support schools was given. The first step to provide a district system was taken by the General Assembly in 1825. The county commissioners' courts were authorized to form school districts in their respective counties.³ The election of district trustees was authorized and their duties were defined. The legal voters were vested with power to levy taxes, but it is doubtful if a district ever functioned under the authority of the law of

¹Biennial Report, op. cit., 1934, App. B, p. 9.

²Laws of Illinois, 1820-1821, p. 39.

³Ibid., 1824-1825, p. 121.

1825. In 1827, the payment of taxes for schools was made voluntary.¹

The second step to provide a district system was taken in 1837 when the election of five trustees in each township was provided for the purpose of promoting schools. The trustees upon election were to become a corporate body and were empowered to divide the township into school districts.² In 1838, the trustees of schools were made successors to the trustees of school lands.³ The third step was in 1844 when the General Assembly provided for the district school directors and defined their duties, which included the collection of tuition to defray part of the expenses of the school.⁴

The fourth step was in 1846 when the General Assembly for the most part legalized the present township-district system. The trustees were empowered in this law to hold title to property and to manage funds and the directors to conduct the schools.⁵ Broadly speaking, this differentiation of the duties of the township trustees and the district directors obtains today. The fifth and final step in the evolution of the school district was in 1857. The General Assembly in 1857 made the directors a body politic and corporate. The law of 1857 also provided that the directors should build school houses and pay teachers.⁶

Legal Nature of School District

The school district is a public corporation with limited powers.⁷ The courts have been consistent in ruling that the school district possesses only the powers conferred by the General Assembly or such as may be necessary to carry into effect a conferred power. The school district is a quasi-municipal corporation, created by the General Assembly to carry out state policy.⁸ It is an involuntary political or civil division of the

¹Ibid., 1827, p. 365.

²Ibid., 1837-1838, p. 316.

³Ibid.

⁴Ibid., 1844, pp. 64-65.

⁵Ibid., 1846, p. 134.

⁶Ibid., 1857, p. 274.

⁷School Directors v. Fogleman, 76 Ill. 189.
Stevenson v. School Directors, 87 Ill. 255.

⁸Kinnare v. City of Chicago, 171 Ill. 332.

state, created as an auxiliary of the state to aid in the administration of government.¹

The school district and its board are separate entities.² A legally constituted school district is composed of the territory included within its corporate boundaries, and the board of education furnishes the method and machinery for the government and management of the district.³ A school district with its boundaries coterminus with the boundaries of a city is a corporate entity separate and distinct from the city.⁴ School districts may be changed at the will of the General Assembly.⁵ Local authorities may, upon receipt of a legal petition, however, alter district boundaries. The school board of an abandoned or divided district continues until debts are paid.⁶ The acts of the officers of a de facto district are valid and effectual if they concern the public or third persons.⁷

Types of School Districts

The school districts, classified from the point of view of levels of education provided, are districts providing only the first eight years of education, districts providing ten years, districts providing eleven years, districts providing twelve years, and districts providing only the ninth, tenth, eleventh, and twelfth years. The school districts, classified from points of view other than the levels of education provided, are districts with a population of fewer than 1,000 inhabitants, districts with population of 1,000 to 100,000, districts of 500,000 or more, consolidated districts, non-high school districts, community consolidated districts, special charter districts, community high school districts, and township high school districts. Excluding

¹People v. Board of Education, 255 Ill. 568.

²Kinnare v. City of Chicago, 171 Ill. 332.

³Ibid.

⁴Speight v. The People, 87 Ill. 595.
McCurdy v. Board of Education, 357 Ill. 263.

⁵People v. Madison, 280 Ill. 96.

⁶Chalstrom v. Board of Education, 244 Ill. 470.

⁷Sharp v. Thompson, 100 Ill. 447.

the last named district, the number of types of districts is eight.

There are eight types of township high school districts. A township high school district may include any one of the following: a school township, two or more adjoining townships, two or more adjoining school districts, parts of adjoining townships, any district of 2,000 or more inhabitants, a township and parts of one or more adjoining townships, the remainder of a township where part has been included in another township high school district, and a township in a city of 1,000 to 100,000 inhabitants, the major part of which population resides in the township. The total number of types of school districts in Illinois classified on bases other than levels of education provided is sixteen.

Consolidation of School Districts

Illinois has more school districts than any other state. The number of school districts in this state is 9.4 per cent of all the school districts of the United States. In 1934, according to Anderson, there were 127,108 school districts in the entire country, 11,990 of which were in Illinois.¹ The foregoing section indicates too the complexity of the district problem from the point of view of so many different types of districts. Moreover, there is little evidence of a serious movement toward simplification. In 1917 the General Assembly passed an act permitting two or more districts to consolidate.² In 1923 another consolidation act was passed permitting the organization of community consolidated districts.³ In the last biennial report (1934) of the Superintendent of Public Instruction, however, only 110 consolidated schools were reported.⁴ About one per cent of the school districts in Illinois are consolidated districts. It cannot be denied that the movement toward the abolition of one-room schools has not been impressive.

¹William Anderson, The Units of Government in the United States, p. 11. Chicago: Public Administration Service, Bulletin 42, 1934.

²Laws of Illinois, 1917, p. 733.

³Ibid., 1923, p. 584.

⁴Biennial Report, op. cit., 1934, App. B, p. 11.

It is significant that every commission appointed to study the schools of Illinois has recommended some sort of larger unit of educational organization and administration. The Commission of 1907 recommended the abandonment of small schools and the establishment of the township unit.¹

The report on Educational Administration in Illinois by John M. Matthews in 1914 recommended changes in local school administration by permitting townships to adopt the township unit, by consolidating the several township authorities, by transferring the management of local school funds to county treasurers under the supervision of the county superintendents, except in Chicago, and by providing educational qualifications for county superintendents, and authorizing counties to establish county boards of education.²

The Commission of 1925 gave several reasons why Illinois should adopt a larger unit of school control and support.³ The Advisory Staff of the Commission appointed in 1935 has urged gradual evolution toward the county unit of school support and control.⁴ For reasons inappropriate here, the General Assembly has not responded to a demand for the larger unit, except for passing the two acts permitting the consolidation of districts mentioned above, which is insignificant in relation to the immensity of the one-room school district problem.

¹Report of the Educational Commission to the Forty-Sixth General Assembly, pp. 137-46. Springfield: Illinois State Journal Co., 1909.

²J. M. Matthews, Report on Educational Administration Created Under Authority of Forty-Eighth General Assembly, p. 83. Chicago: Windemere Press, 1914.

³Report of Educational Commission to Fifty-Fourth General Assembly, 1925 (State of Illinois), pp. 32-34.

⁴Report of 1935 of the Advisory Staff to Educational Commission (State of Illinois), p. 10.

CHAPTER VI LOCAL SCHOOL ADMINISTRATION

Introduction

The Supreme Court of Illinois in an important case ruled that the board of education provided the method and machinery for the management of the schools of the district.¹ The county superintendent of schools is a part of the machinery of local school administration and has a detailed legal status. The city superintendent of schools and the secondary school principal, however, have no separate legal status in Illinois. The legal basis of the machinery of local school administration will be treated in this chapter. The legal status of the county superintendent, the township trustees, the township treasurer, school directors, and the board of education will be presented.

The County Superintendent of Schools

The county superintendent evolved from the county land agent or commissioner of the early decades of the state's history. The office of the county land commissioner at first was appointive.² The land commissioner's duties were only indirectly related to the schools. In 1841 it was provided by law that the office of the land commissioner should be made elective.³ In 1845 the General Assembly provided that the county land commissioner should be designated ex officio superintendent of county schools, and that the office should be elective.⁴ Duties of educational nature were defined in the law of 1845. In 1865 the General Assembly changed the name of the chief county school officer to county superintendent of schools and extended the term of

¹Kinnaird v. City of Chicago, 171 Ill. 332.

²Laws of Illinois, 1829, p. 150.

³Ibid., 1841, pp. 261-62.

⁴Ibid., 1845, pp. 498-99.

office to four years.¹ In this law considerable emphasis was placed on school supervision. The county superintendent became a constitutional officer with the adoption of the present constitution in 1870.

The qualifications of the county superintendent were not defined by law until 1915, even though the constitution adopted in 1870 provided that the General Assembly should define his qualifications. The county superintendent's qualifications are that he must be of good character, actually engaged in educational work before assuming office, a holder of a valid county or a state certificate, and that he must have had four years of experience in teaching.² The county superintendent's salary began on fees and per diem basis. The salary is now paid by the state and according to the population of the county.³ The county superintendent's duties are elaborately defined by law. His duties are more administrative than supervisory. The centralizing tendency of authority as related to the chief county school officer has not been as impressive as the forty-six duties and powers might indicate at the first reading. The county superintendent must conduct two political campaigns, primary and general elections, every four years.

Township Trustees of Schools and Township Treasurer

Each congressional township was established a township for school purposes in 1837.⁴ The township trustees are the oldest school board or body in the state. The school business of a township is transacted by three trustees.⁵ No person is eligible to the office of trustee of schools who is not a resident of the township, and at least twenty-one years of age.⁶ The term of office is six years.⁷ The duties and powers of the trustees are largely financial in nature, except the dividing of the township

¹Ibid., 1865, p. 112.

²Ibid., 1915, p. 628.

³The School Law, op. cit., pp. 200-201.

⁴Laws of Illinois, 1837, p. 316.

⁵The School Law, op. cit., sec. 20, p. 12.

⁶Ibid., sec. 21.

⁷Ibid., sec. 32, p. 15.

into school districts and the changing of district boundaries. The duties and powers of the trustees are not related directly to the management of the school. The trustees do not build school houses, employ teachers, determine the curriculum, and levy taxes.

The General Assembly created the office of township treasurer in 1837 along with the township trustees of schools.¹ The township treasurer is the chief executive officer of the trustees, and in some respects, the banker for the school districts. He is elected by the trustees for a term of two years.² The compensation for his services is not determined by law, hence it is left to the discretion of the trustees.³ Seventeen sections of the present school law are devoted to the township treasurer.⁴

The township trustees and the treasurer represent a situation very common in the evolution of governmental machinery in all areas. At any given period in governmental organization, there are always found vestiges of an earlier day. J. Cayce Morrison wrote several years ago as follows: "In the school laws of today, we find interwoven with new concepts old ideas that were written into the law during a pioneer period, and we find principles of a modern day operating as best they can through an administrative organization that has long outlived its usefulness."⁵ The Advisory Staff of the Educational Commission of 1935 has the following to say of the present township organization.

Illinois also has a township organization consisting of three elected trustees in each congressional township and a treasurer appointed by them who receives tax money from the county treasurer and distributes the money to the several districts of his township. This form of township organization is obsolete and is generally considered a needless extravagance.⁶

School Directors and Boards of Education

The district is a school unit within the township. The schools of the district (fewer than 1,000 inhabitants) are admin-

¹Ibid., sec. 46.

²Ibid., sec. 67, p. 25.

³Ibid., sec. 69, p. 26. ⁴Ibid., secs. 67-84, pp. 25-32.

⁵J. Cayce Morrison, Legal Status of the City Superintendent, p. 40. Baltimore: Warwick & York, Inc., 1922.

⁶Report of Advisory Staff to Educational Commission of 1935 (State of Illinois), p. 7.

istered by a board of three school directors, the number of whom in the state is more than 33,000. The authority exercised by the directors is significant. They levy the taxes, employ teachers, fix salaries, and determine the curriculum. Here localism is at its best or at its worst. There are 10,878 districts in the state with fewer than 1,000 inhabitants.¹ There are 6,211 districts which administer one-room schools enrolling 15 or fewer pupils.² The Advisory Staff of the Educational Commission of 1935, in its report to the Commission, wrote as follows: "Instead of having today a well integrated system of schools, the state has a very loose organization consisting of a weak state and county system, a useless township system, and an overdeveloped district system."³

School directors, five in number, administer the schools in the consolidated district. The board of education administers schools in the district of 1,000 to 100,000 inhabitants, the community consolidated district, the township high school district, and the community high school district. The duties of these boards include the duties of the directors and certain additional ones as defined by law.⁴ The duties of the board of education include the employment of a competent superintendent of schools who may serve as either a principal or a teacher.⁵ Other than this duty of the board of education the superintendent of schools in Illinois has no legal status. School board procedure in Illinois is defined by law. The organization of the board, regular and special meetings of the board, method of voting and board records follow the requirements laid down in the statutes.

Liabilities of School Officers

A board of education in Illinois is not liable for the

¹Biennial Report, op. cit., 1933-1934, App. B, p. 9.

²Ibid.

³Report of the Advisory Staff to Educational Commission of 1935, op. cit., p. 8.

⁴The School Law, op. cit., sec. 127, p. 64.

⁵Ibid., clause 6, p. 65.

torts of its employees.¹ The court decisions have been consistent in this relation, especially since there is no statute in Illinois making members of boards of education liable for the torts of its employees. A board of education has no authority to use school funds to pay medical or hospital bills for pupils injured even while acting as a school boy patrol.² School officers are not personally liable for the enforcement of an unreasonable rule if they acted in good faith.³ School officers are liable for numerous offenses which have been defined by statute. Members of boards of education are liable for engaging in business with the district which they represent. The General Assembly has imposed a penalty of \$25.00 to \$500.00 or even imprisonment for such irregularity.⁴ In the statutory group is also the liability related to a school officer seeking information regarding the religious affiliation of a person who is a candidate for an educational position, especially if the school officer is seeking such information with the thought of influencing said person's appointment as a superintendent, principal, or teacher.⁵

Complexity of Local School Administration

An analysis of the legal provisions for the school district and for local school administration presents evidences of complexity. The county superintendent, the township trustees, the township treasurer, and the school directors jointly participating in the administration of a one-room school is far from an example of simplified educational organization and administration. Considerable overlapping of authority exists in the district system which, of necessity, complicates the administration of the schools.

. It was almost prophetic that State Superintendent William H. Powell, soon after the passage of the first effective school law in 1855, wrote the following: "The 35,000 officers required

¹Kinnare v. City of Chicago, 171 Ill. 372.

²Report of Attorney General of Illinois, 1929, p. 506.

³Churchill v. Fewkes, 13 Ill., App. 520.

⁴The School Law, op. cit., sec. 255, p. 137.

⁵Ibid., sec. 273a, p. 141.

to operate the present law, the large majority of whom are wholly unacquainted with its details, added to the inevitable differences of opinion between such officers, which naturally grow out of a joint jurisdiction, preclude the possibility of that systematic and harmonious action necessary to build up and perfect a common school system worthy of the great state of Illinois."¹ There have been only three general revisions of the school laws since the enactment of the first effective general school law in 1855. Instead of periodical recodifications of the school laws, the General Assembly has added one section to clarify another section, until lawyers have come to say almost unanimously that the school laws are the most confusing legislation on the statute books to-day. Since localism dominates the school system of Illinois, the greatest complexity and confusion exists in the laws governing local organization and administration.

The translation of legal provisions into forms of organization has meant approximately 12,000 school districts (about 10 per cent of the number of school districts in the entire United States) with each district a part of another district--the township, many kinds of school districts, and several types of school boards. There are approximately 5,500 township trustees, 1,800 township treasurers, and approximately 40,000 school directors and members of boards of education in the state. The General Assembly has attempted to define in great detail the duties, powers, and liabilities of school officers.

It is widely held that some sort of simplification of local organization and administration in behalf of the promotion of understanding of the school system on the part of even the school people themselves, economy, and efficiency is greatly needed. It is not the purpose of this study to propose types of reorganization. Rather, it is the purpose to present a picture of the organization and administration of the schools as found in law and in the application and interpretation of law.

¹William H. Powell, Report of Superintendent of Public Instruction, 1857-1858, p. 12.

CHAPTER VII

THE FINANCIAL SUPPORT OF SCHOOLS

Introduction

The problem of financial support of schools is closely interwoven with the problem of organization of schools. Localism dominates school organization in Illinois, the logical deduction from which is that support is derived from local sources. This is very true. Only a very small part of the cost of schools in Illinois is borne by the state. It is true, however, that the first means of support of schools was derived from neither local nor state sources. Income from the lands given by the federal government for the use of schools was the first source of school revenue in Illinois. The permanent state school funds now in existence, excepting the surplus revenue fund, originated with federal grants of lands for the use of schools. The permanent school funds, the state distributive fund, and the local support of schools will be treated in this chapter.

Permanent School Funds

There are seven permanent school funds in Illinois, namely, the school fund proper, the college fund, the seminary fund, the surplus revenue fund, the county fund, the township fund, and the state university fund. Four of these funds were created for the use of the common schools and three for institutions of higher learning. All these funds consist of moneys and lands received from the federal government or funds set aside by the state government for the use of the schools. The funds, for the purpose of clarity, will be treated separately and in the order named.

The school fund proper.--Almost all the states formed from territory under control of the federal government have been granted upon their admission to statehood a certain percentage of the net proceeds from the sales of federal government lands within their boundaries. In admitting Illinois to the Union, it

was provided in the Enabling Act passed by the Congress that three per cent of the net proceeds from the sale of public lands should be used for "the encouragement of learning," of which one-sixth part should be set aside for a college or university.

In 1821 the General Assembly authorized the State Treasurer to receive the "three per cent" fund when paid over by the Secretary of the Treasury and to deposit it in the state bank.¹ In 1825 the General Assembly created the Commissioners of the School Fund into whose hands the fund passed.² It was authorized in this act (1825) that the funds should be applied "in such manner for the use of schools and a seminary of learning, as shall be prescribed by law."

The General Assembly in 1829 authorized the Governor to borrow this school fund on the account of the state at six per cent interest.³ It was also provided that the interest should be refunded. The first payment by the federal government from the sale of "three per cent lands" was made in 1821 and the last payment in 1863.⁴ The common school fund is now \$613,362.96.⁵

The college fund.--The college fund was created from one-sixth of the net proceeds from the sale of the "three per cent lands." In 1835 the General Assembly, as was the case of the seminary fund, authorized that the interest from the college fund should be loaned to the common school distributable fund. It was provided in 1861 that a part of the accrued interest on the college fund from 1837 to 1857 should be paid to Normal University.⁶ The remaining part of the accrued interest was added to the principal. The amount of the fund at present is \$156,613.32.⁷ The state appropriates annually the interest at the rate of six per cent to the normal universities.

The seminary fund.--The source of the seminary fund was

¹Laws of Illinois, 1821, p. 92.

²Ibid., 1825, p. 126. ³Ibid., 1829, p. 118.

⁴W. L. Pillsbury, "Permanent School Funds of Illinois," Biennial Report of Superintendent of Public Instruction (State of Illinois), 1882, p. cxxxvii.

⁵Auditor's Report, State of Illinois, 1934, p. 145.

⁶Laws of Illinois, 1861, pp. 147-49.

⁷Auditor's Report, op. cit., p. 145.

the two townships granted by the national government to the state for seminary purposes. The fund was loaned to the state in 1835.¹ The total amount of the fund in 1857 was \$59,838.72.² In this year, 1857, the General Assembly provided for the establishment of a normal university.³ All of the interest from this fund, except an amount equal to one-quarter per cent of the whole fund which was given to the Deaf and Dumb School in 1839, was appropriated for the university.⁴ In 1873, however, the General Assembly appropriated the whole of the interest for the university. Moreover, in 1877 the income from the seminary fund was equally divided between the normal university at Normal and the normal university at Carbondale.⁵

It should be pointed out again that the state began distributing the income from this fund to the common schools in 1836. The state did not terminate this appropriation until it established Normal University. Curiously enough, the interest on the fund from 1836 to 1857 has never been paid to the normal universities.⁶

The surplus revenue fund.--The surplus revenue fund is another grant from the federal government. In 1836, the Congress authorized the Secretary of the Treasury to loan all money in the Treasury in excess of five million dollars to the states.⁷ The basis for distribution to the states authorized was the ratio of the number of Congressmen in each state to the total number of the members of the Congress. It was provided that the states should repay the money called for by the federal government. The amount added to the school funds, because of the distribution of the federal surplus, was \$335,592.32.⁸ The money has not been called for by the federal government. Moreover, it has been used by the state. Interest at the rate of six per cent is paid

¹Laws of Illinois, 1835, pp. 22-24.

²Biennial Report, op. cit., 1857, p. 7.

³Laws of Illinois, 1857, pp. 298-300.

⁴Ibid., 1839, pp. 162-64. ⁵Ibid., 1877, pp. 51-52.

⁶Pillsbury, Biennial Report, op. cit., 1882.

⁷United States Statutes at Large, V, 55. Boston: Little, Brown & Co., 1854.

⁸Laws of Illinois, 1837, App., p. 120.

by the state and is distributed to the schools in the same manner as the interest on the common school fund.

The county fund.--The General Assembly in 1835 provided that the teachers should be paid only one-half of the money due them for services rendered during the twelve months preceding November 1, 1835, and that the remaining money should constitute "The County School Fund." It was authorized that the fund should be loaned out in a manner similar to the method of loaning township funds, and that the interest on it should be distributed for the support of schools in the counties. In 1909 the General Assembly provided that the county funds should be, in effect, merged with the township funds.¹ The present statute providing for the status of the county fund is not essentially different from the statute of 1907.²

The amount of the fund recorded in the Biennial Report of the State Superintendent for 1906 was \$161,686.20.³ Pillsbury wrote in 1882 that it might be safely assumed that the additions to the fund, probably from sales of swamp lands, exceeded the amount accumulated under the original act.⁴ It is evident that the state was not successful in its attempt to force the counties to establish school funds of significant proportions.⁵

The township fund.--The present township fund consists of the money received from the sales of sixteenth-section lands and the sixteenth-section lands now held by townships. The township fund is not a state fund. It is managed and distributed by local authorities according to law. The school lands were sold in the early days at the homestead price,--\$1.25 an acre. As lands became more valuable, however, increments to the fund became larger.

The total amount in the fund as found in the first biennial report of the State Superintendent (1857-1858) was \$3,335,680.00.⁶ According to the last biennial report (1934) of

¹Ibid., 1907, p. 521.

²The School Law, op. cit., sec. 215, p. 127.

³Ibid., p. 270.

⁴Pillsbury, Biennial Report, op. cit., 1882.

⁵Ibid.

⁶Report of State Superintendent, State of Illinois, p. 8.

the State Superintendent, the total amount in the township fund (including real estate) is \$46,424,445.13.¹ The income from the township fund reported in 1934 was \$1,014,191.62.²

The state university fund.--The state university fund, denominated as the University of Illinois Endowment Fund in the State Auditor's reports of a reasonably recent date, originated as the industrial university fund. The term industrial was used because the permanent fund now belonging to the University of Illinois was provided by the Morrill Act passed by the Congress in 1862, which had for its purpose, the establishment of agricultural and mechanical colleges in the several states, especially the states that had not seceded from the Union.³

The State Distributive Fund

The first attempt to create a state distributive fund, which was in 1825, failed. In 1855 the General Assembly enacted the first effective free school law which included the first state tax for school support. It was provided in this law that the proceeds from a two-mill tax on the taxable property of the state should be distributed to the free schools.⁴

In 1873 the General Assembly initiated the annual appropriation for the schools. From 1873 to 1909 the General Assembly appropriated \$1,000,000.00 annually to the state school fund. This amount has been gradually increased until it is now \$13,000,000.00 a year.⁵ Illinois ranks thirty-sixth among the states in granting aid to the schools, however.⁶ The state has distributed funds to schools on the bases of the number of children in average daily attendance, needy districts, training of teachers, and the length of the school year. The law of 1923 em-

¹Ibid., App. B, p. 5.

²Ibid.

³United States Statutes at Large, III, 503. Boston: Little, Brown & Co., 1854.

⁴Laws of Illinois, 1855, pp. 77-78.

⁵Ibid., 1909, p. 82; 1911, p. 95; 1913, p. 100; 1915, p. 209; 1917, p. 164; 1919, p. 162; 1921, p. 91; 1923, p. 20; 1925, p. 23; 1927, p. 40; 1929, p. 25; 1931, p. 24; 1933, p. 40; 1935, p. 26.

⁶L. R. Grimm, State School Fund Payments in Illinois and Other States, p. 3. Springfield: Department of Research and Statistics, Illinois State Teachers' Association, 1936.

played the principle of stimulation in the distribution of funds to the schools.¹ The present law emphasizes the principle of equalization.²

Local Support of Schools

Present provision for annual tax levy.--The revenue clause in the present general school law provides for the annual tax levy for all school districts in the state with fewer than 200,000 inhabitants except the special charter districts.³ Chicago is governed by the statutory provisions for districts with more than 500,000 inhabitants.

The present revenue clause provides for a minimum school year of eight months. The tax rate for educational purposes is one per cent and for building purposes three-eighths of one per cent. The maximum rates with approval by referendum are one and one-half per cent for educational purposes and one-half per cent for building purposes.

Special provision is made for districts "maintaining" grades nine, ten, eleven, and twelve, in addition to grades one to eight inclusive. Such districts may levy not to exceed one per cent for educational purposes and three-eighths of one per cent for building purposes in addition to the taxes that the district is already authorized to levy, if approved by referendum. It is therefore possible under the authority of this provision for such districts to double their tax rates. The statute further provides that if these districts have been empowered to levy one and one-half per cent for educational purposes for grades one to eight inclusive, the districts may levy two and one-half per cent for grades one to twelve inclusive. These districts may levy one and four-fifths per cent or two and four-fifths per cent, if approved by referendum. Thus a liberal provision is made for levying taxes for educational purposes in districts "maintaining" twelve grades under conditions explained above.

The tax rate is only one of the two major factors in the

¹Laws of Illinois, 1923, pp. 580-84.

²Ibid., 1927, pp. 834-39.

³The School Law, op. cit., sec. 189, pp. 108-10.

property tax situation. The tax must always be considered in terms of the tax base. This is particularly important in Illinois because approximately ninety-five per cent of the school revenue is provided by local taxes on real property.¹ It may be pointed out here, however, that there is no constitutional limitation on the General Assembly's authority to fix tax rates in Illinois. Its power in this connection is plenary. The Supreme Court said in the case of People v. Chicago and Illinois Midland Railway Company, "The constitution places no limit on the right of the legislature to fix rates of taxation for school purposes."²

Payments from educational and building funds.--The statute provides that a board of education shall levy taxes for educational purposes and for building purposes. The Supreme Court has ruled that the school board has no authority to use any part of the building fund for educational purposes, or any part of the educational fund for building purposes, also that the two funds should be kept separately--not only on the books of the treasurer but in payments of bills of the district.³

Considerable controversy has appeared from time to time regarding a definition of the purposes of each fund. As evidence of controversy not of a recent date, the General Assembly in 1907 authorized that the cost of building repairs should be paid from the building fund instead of the educational fund.⁴ School boards have differed in their interpretation of one fund as differentiated from the other, especially as related to janitors' wages. A clear distinction between the funds is not found in either the statutes or the court decisions. A recent interpretation of the two funds has been issued by the State Superintendent of Public Instruction. It is as follows:

Out of the building fund should be paid the cost of the building site, the cost of the erection of the building, the cost of additions or improvements to the building, the interest on bonds issued for building purposes, insurance on school buildings and fixtures and equipment attached to such building and janitor services performed for the benefit of the building as distinguished from the benefit of the school.

¹L. R. Grimm, The Illinois Plan of State Aid for Common Schools, p. 3. Springfield: Department of Research and Statistics, Illinois State Teachers' Association, 1934.

²256 Ill. 468.

³People v. Hassler, 262 Ill. 133.

⁴Laws of Illinois, 1907, p. 394.

Out of the educational fund should be paid the salaries of all teachers, superintendents, bus drivers, stenographers, secretary of the school board and the greater part of the janitor's salary. There has been no rule laid down to determine just what proportion of the janitor's salary should be charged to each fund. In many instances, the whole salary has been charged to the educational fund. Only such part of his services as are performed for the benefit of the building should be charged to the building fund; all others to the educational fund.

Repairs to furniture, apparatus and movable equipment not attached to the building should be paid out of the educational fund. The purchase price of furniture, movable equipment, library, laboratory, etc., should be paid out of the educational fund. Supplies for the office, library, laboratory and transportation bus should be paid out of the educational fund. Insurance on the furniture and movable equipment, library, etc., should be paid out of the educational fund; of course, all fuel, light, water and power should be paid from the educational fund.¹

Sinking fund.--The question arises frequently regarding the validity of a tax levy for the purpose of creating a sinking fund for the erection of or the improvement of a building. Sinking funds are valid only when the erection of a building has been approved by the electorate. In the case of the Cleveland, Cincinnati, Chicago and St. Paul Railway Company v. People, the Supreme Court ruled that the levy to erect a new building was not valid if the new building existed only in the minds of the directors.²

The certificate of levy.--The present statute provides that the school board shall certify annually the amount of money required for schools to the township treasurer on or before the first Monday in August.³ It is also provided that the township treasurer shall transmit the certificate to the county clerk before the second Monday in August. In case of failure of the board to file the certificate or of the township treasurer to transmit it to the county clerk, the assessment is not vitiated.⁴ These provisions have been the subject of considerable contro-

¹John A. Wieland, The State School Fund and Its Interpretation, p. 7. Department of Public Instruction (State of Illinois), cir. 286.

²208 Ill. 418.

³The School Law, op. cit., sec. 190, pp. 116-17.

⁴Ibid., p. 117.

versy. The Supreme Court in several cases decided that the failure of the board to meet and make its levy on or before the first Monday in August invalidated the levy.¹ It is evident that the school board must meet and decide on the amount of its levy on or before the date determined by law.

Methods of borrowing.--The school law provides three methods by which the school districts may borrow to establish and support schools. These methods are the issuing of bonds,² anticipation tax warrants,³ and teachers' orders.⁴ The purposes of these methods of borrowing are not altogether similar. Bonds have been, until recent years, issued only to erect school buildings and for a period as long as twenty years. The tax anticipation warrant is issued to meet a temporary need and does not extend beyond the next payment of taxes against which it is issued. The teachers' orders are similar to the tax anticipation warrants except that they are issued for teachers' wages only.

In 1923, school boards were permitted by law to issue bonds to meet teachers' orders and other claims, the explanation of which was delays in payment of taxes because of reassessments of property and delinquencies in tax payments because of depressed business conditions. It is provided now in the statutes that school boards may issue bonds for such purposes without a referendum unless twenty per cent of the legal voters petition a referendum.⁵ The petition for the referendum must be submitted to the board of education within ten days from the date of the advertisement of the board's resolution to issue the bonds.

Determination of the limit of indebtedness.--A difficult problem in relation to the limit of indebtedness is the determination of what constitutes indebtedness in excess of the limit defined by the constitutional or the statutory provision. The question regarding the relation of the restriction of indebtedness to liabilities other than bonds has arisen a number of times.

¹People v. Wabash Ry. Co., 296 Ill. 518.
People v. C. & A. R. R. Co., 306 Ill. 525.
People v. M. & St. P. Ry. Co., 312 Ill. 218.

²The School Law, op. cit., pp. 118-19.

³Ibid., sec. 117, p. 58.

⁴Ibid., sec. 118.

⁵Ibid., pp. 161-66.

Anticipation tax warrants have not been interpreted as increasing the indebtedness of the district.¹ Warrants and teachers' orders are simply assignments of taxes when collected. They change the form of the district's indebtedness, but they do not increase it. The Supreme Court ruled in one case, however, that a school board, which had already issued bonds in excess of the constitutional limit in defraying only a part of the cost of a building, could not issue anticipation tax warrants to defray the balance of the cost of the building.²

It has been necessary for the courts to interpret the relation of contracts made by municipal or school authorities to the debt limit prohibition. In the case of Springfield v. Edwards, the Supreme Court included liabilities for current expense or otherwise as falling within the limit of indebtedness. In this case Ninian Wirt Edwards had brought suit against the city of Springfield for having allegedly exceeded the limit of indebtedness.

In an important Chicago case, the Supreme Court ruled that a contract of the city for the removal of garbage could not be enforced because the contract exceeded the debt limit; also, that the amount in the treasury could not be deducted in estimating the aggregate indebtedness.³ The court said that a city having an aggregate indebtedness exceeding the constitutional limitation of five per cent was powerless to create any additional debt, even for its ordinary and current expenses, and that no contract for the payment of money made while the city was so situated could be enforced. Thus, according to the foregoing decisions, a contract is a debt in Illinois.

¹Law v. The People, 87 Ill. 385.
Booth v. Opel, 244 Ill. 317.
The People v. I. C. R. R. Co., 309 Ill. 277.
Berman v. Board of Education, 360 Ill 535.

²People v. T. P. & W. Railway Company, 339 Ill. 327.

³City of Chicago v. McDonald, 176 Ill. 404.

CHAPTER VIII THE PUPIL

Introduction

The Supreme Court in the case of Logsdon v. Jones said that the purpose of the public laws pertaining to education was to secure a good common school education to all children of the state.¹ The law pertaining directly to the pupil is related to the right of the child to attend the public school, the obligation of the child to attend school, and the right of school authorities to maintain pupil discipline. These phases of the legal status of the pupil will be treated in the order named.

The Right of the Child to Attend the Public School

Age of admission.--The application of the law prescribing the age of admission to school has not been without controversy. The law pertaining to the age limits for which school officers must provide a school is as follows: "It is the duty of the board of directors to establish and keep in operation for at least eight months in each year, and longer if practicable, a sufficient number of free schools for the accommodation of all persons in the district over the age of 6 and under 21 years and to secure for all such persons the right and opportunity to an equal education in such schools."²

Some school districts permit a child to enter school if the sixth birthday falls within a certain number of days after the beginning of the term. Other districts refuse admission until the beginning of the term following the sixth birthday of the child. Neither procedure is strictly within the law. In the case involving a child in Moline, the Supreme Court decided that

¹311 Ill. 245.

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The School Law, op. cit., sec. 114, p. 54.

a school regulation denying admission of the child until the beginning of the term following the child's sixth birthday was unreasonable.¹

Right of attendance and residence.--There has been little legislation defining the relation between the right of the child to attend school and the child's residence. In the law of 1855, it was provided that the township board of trustees should levy the tax needed to keep in operation "a sufficient number of free schools for the accommodation of their children. Temporary residence in a district simply for the purpose of school advantage does not entitle children to attend school in that district."² Children who go from one district to another in order to work, however, are entitled to the privileges of the free schools in whatever district they may happen to be employed.³ The Supreme Court in the case of Ashley v. Board of Education, which involved the right of orphan children to attend the schools of the district in which the orphanage was located, said:

As a general rule, the residence of parents is the residence of their pupils. Boarding children in the district, does not itself, entitle them to the benefits of the free school in such district. The mere temporary residence of a family in a district, solely to enjoy the benefits of the free schools and with the intention of removal as soon as the purpose is accomplished, does not entitle the children to the privileges of said schools. The removal of a portion of a family from the legal domicile, to another district in order to send to the free schools thereof does not confer the right to do so. As a general rule, the residence of their parents is the residence of employees; thence the privilege of the free schools in another district is not acquired by placing children temporarily at service in that district. This includes those who are placed in families to attend school and do chore-work for their board, etc. The most liberal policy is, however, recommended towards this class of children. The State has as much interest in their education as in that of the more favored, and although not legally eligible to attend free schools, the directors should permit them to do so when not inconsistent with the rights of others, and the welfare of the school. Children who have been apprenticed or adopted into a new family or who have been placed permanently in the care of others, with no intention of withdrawal, or those over whom parents have relinquished all control from whatever cause or those who have no parents or guardians, or

¹Board of Education v. Bolton, 85 Ill. App. 92.

²Ashley v. Board of Education, 275 Ill. 274.

³Ibid.

whose parents or guardians live in another State or county and exercise no control over their children, or those who have no permanent abode, but go from place to place in search of employment, and whose only home is where they find work-- the children included in all the above classes are to be enumerated in the district where they live and are entitled to all the rights and benefits of the free schools in said district. Bateman's Common School Decisions, ed. of 1890, p. 135.¹

The question arises frequently regarding the right to vote and the establishment of school residence. It is not necessary that the parent be eligible to vote in order to enable his child to attend school.² An agreement in good faith of the parents of a child with a relative that said child shall make its home with the relative permits the child to attend the schools of the district in which the relative resides.³

Right of attendance and health.--The right of the local school officers to require vaccination as a prerequisite to school attendance because of the presence of smallpox in a school district has been ruled upon several times by the Supreme Court. In the Chicago case of Burroughs v. Mortenson, the court ruled that vaccination could not be made a prerequisite to school attendance where there was no epidemic of smallpox in the community.⁴ The Supreme Court ruled in the case of Hagler v. Lerner that when smallpox was widespread in a city, a child could be excluded from the public schools for a period of two weeks, unless said child could produce a certificate that it had been successfully vaccinated within five years, or unless it could produce a certificate that it had had the smallpox.⁵

Obligation of Child to Attend School

The obligation of the child to attend school as it is now defined by statute had practically evolved by 1919. The law of 1919 provided, as contrasted with the law of 1909, that the instruction should be in only the English language.⁶ Few changes

¹275 Ill. 274.

²People v. Moore, 240 Ill. 408.
Logsdon v. Jones, 311 Ill. 425.

³People v. Board of Education, 206 Ill., App. 381.

⁴312 Ill. 163.

⁵284 Ill. 547.

⁶Laws of Illinois, 1919, p. 917.

in the law have been made since 1909. The salient features of the present law are as follows:

1. Age limits of required attendance in some public or private school are seven and sixteen years.
2. The period of attendance required is the entire time the public school in the child's district is in session.
3. The exemptions are attendance in a private or parochial school in which the required branches by grade are taught in the English language, physical or mental disability as certified by a competent physician, lawful employment between the ages of fourteen and sixteen years (eight hours of attendance per week required if district maintains a continuation school), and attendance of children between the ages of twelve and fourteen years at confirmation classes.
4. The fine upon conviction for violation of this act is from \$5.00 to \$20.00.
5. The county superintendent of schools is empowered to appoint a truant officer who shall be assistant county superintendent of schools. His duties apply to districts that do not employ truant officers.¹

The problem of exemptions from attendance.--The compulsory attendance law has not been declared unreasonable or inconsistent in relation to the general purposes of the school law by the courts or by the Attorney General. It has been ruled twice by the Attorney General that graduation from the eighth grade does not exempt the child under sixteen years of age from continuing his education in the high school.²

The Supreme Court in a case which concerned the exemption of school property from taxation handed down a decision, a part of which is related to the problem of appraising a private school under consideration as the equivalent of the public school. The criteria for evaluating a private school are more definite than the criteria given in the preceding ruling of the Attorney General. The court declared as follows: "A 'school' within the meaning of the provision of the law exempting from taxation property used exclusively for 'school purposes,' is a place where systematic instruction in useful branches is given by methods

¹The School Law, op. cit., secs. 274-75, pp. 141-44.

²Report of Attorney General of Illinois, 1923-1924, p.301.

common to schools in the common acceptation of that word, as distinguished from what are called schools where instruction is given in dancing, riding, deportment, and like things."¹ The above opinions help to clarify the private school to be accepted as an equivalent to the public school in the enforcement of the compulsory attendance law. In brief, the curriculum, methods of instruction, age-grade placement, and the hours of instruction must be the same as in the public schools.

¹The People v. Deutsche Gemeinde, 249 Ill. 132.

CHAPTER IX THE TEACHER

Introduction

The teacher occupies an important place in the school laws of Illinois. Curiously enough, the law of 1825, school legislation greatly ahead of its time, did not provide for the teacher except a minor detail regarding compensation.¹ Within a few years, however, the teacher appeared frequently in the school laws. Probably the General Assembly has been concerned more with certification than any other phase of the teacher's relation to the schools. The details of the certification of teachers have been fully defined by law in Illinois rather than delegated to an administrative body. The certification of teachers, the contractual relations of the teacher with the school board, and pension legislation for teachers will be treated in this chapter.

The Certification of Teachers

First legalization of certification on the basis of training.--Until 1872 no teacher's certificate was issued without an examination. It was provided in the general school law of 1872 that graduates of county normal schools were entitled to certificates of the first grade issued by the county superintendent of schools.² In 1889 the State Superintendent was authorized to issue a first grade and a second grade state certificate, the former to be valid for life and the latter for five years.³ It was provided at this time that the State Superintendent should issue the second grade state certificate without examination to graduates of the normal schools within two years after graduation. The issuance of such certificate was contingent however upon recommendations from the faculty of the normal school and the employing school board.

¹Laws of Illinois, 1825, pp. 121-23.

²Ibid., 1872, p. 722.

³Ibid., 1889, p. 310.

Certification and the curriculum.--It was made mandatory by law in 1855 that the teacher employ the English language as a medium of communication in the schools, which may be interpreted as a curriculum requirement defined by law. The general school law of 1872 related the examination of teachers to the curriculum. It will be noted below that special subjects were recognized in the law of 1872, also that a certificate, probably special or provisional in nature, could be granted because of the introduction of natural science, physiology, and the laws of health in the schools. The law including the foregoing regulation was as follows: "Every school established under the provisions of this act shall be for the purpose of instruction in the branches of education prescribed in the qualifications for teachers, and in such other branches, including vocal music and drawing, as the directors or the voters of the district, at the annual election of directors, may prescribe: Provided, that county superintendents or boards of examiners may, on request of directors, grant certificates to teachers who do not possess the qualifications for teaching the elements of natural science, physiology, or the laws of health."¹ It is also provided in the present school law that the instruction in the elementary branches shall be in the English language.² The present school law contains a provision relative to the curriculum similar to a portion of the above quoted law. The present provision is as follows: "Every school established under the provisions of this Act shall be for instruction in the branches of education prescribed in the qualifications for teachers, and in such other branches, including vocal music and drawing, as the directors, or the voters of the district at the annual election of directors may prescribe."³ It is not inappropriate here to point out that in addition to the above provisions pertaining to the curriculum of the schools, certain special instruction is mandatory. Boards of education are required by law to provide one hour a week of physical training throughout the school year.⁴ It is provided also that at least one-half hour a week must be devoted to moral and humane education.⁵ Moreover,

¹Ibid., 1872, p. 723.

²The School Law, op. cit., sec. 276a, p. 144.

³Ibid., sec. 179, p. 105.

⁴Ibid., p. 280.

⁵Ibid., pp. 241-42.

one hour a week must be devoted to civic instruction.¹

Legislation of varied types of certificates.--The first comprehensive certification law was passed in 1913.² This law in many respects was similar to the present law which was enacted in 1929. It provided for four types of state certificates and seven types of county certificates. The law of 1913 represented a strong centralizing tendency in certificating authority. This tendency in the certification of teachers was well under way in the country at large within a few years after the passage of the Illinois law of 1913.³

The four types of state certificates authorized in the law of 1913 were the four-year elementary, the four-year high school, the four-year supervisory, and the life certificate. It was provided that the three four-year certificates at their expiration could be converted into life certificates on the evidence of successful experience. The seven types of county certificates were the third grade elementary school, the second grade elementary, the first grade elementary, the high school, the supervisory, the kindergarten primary, and the special certificate. The law provided in detail the requirements for each type of certificate under three headings, namely, training, experience, and examination. The training required ranged from high school graduation or the equivalent to graduation from a recognized college or university, depending on the type of certificate. The experience required ranged from none to three years, also depending on the type of certificate. Training was acceptable for certain certificates in lieu of examinations.

It was provided in the law of 1913 that validity of state certificates then in force should not be impaired by the new certificates. Authority was granted for the exchange of certificates in force previous to 1913 for the certificates to be issued under the new law. It was required that every applicant for a county certificate should pay a fee of one dollar for each examination, also that each county certificate should be registered

¹Ibid., pp. 284-85.

²Laws of Illinois, 1913, pp. 586-93.

³Katherine M. Cook, State Laws and Regulations Governing Teachers' Certificates, p. 16. Bureau of Education, Department of the Interior, Bulletin 19, 1927.

annually for which a fee of one dollar was charged. All holders of certificates at present pay a registration fee annually which is used to defray the expenses of teachers' institutes.¹

State examining board.--The certification law of 1913 created the State Examining Board which had for its purpose the supervision of the issuance of county certificates.² The board consisted of the State Superintendent as ex officio chairman, one person engaged in education work appointed by the State Superintendent, and three county superintendents recommended by the State Teachers' Association and appointed by the State Superintendent. It was provided that the examinations should be uniform throughout the state and that the papers should be graded under the supervision of the State Examining Board rather than in the county seats by the county superintendents. The examination paper and the grades earned by the applicant for a certificate were to be returned to the county superintendent with authority to issue a certificate, if the examination was successful, and if, in the judgment of the county superintendent, the applicant possessed the qualifications other than the scholastic, essential for teaching.

The present certification law.--In 1929 the General Assembly repealed the certification law of 1913 and enacted the present certification law. It provides for two major classifications of certificates, namely, unlimited in time and limited.³ The certificates of the first classification are issued by the State Superintendent and those of the second classification by the State Examining Board and the county superintendents.

The five types of life certificates which the State Superintendent is authorized to issue are the supervisory, the high school, the special, the kindergarten-primary, and the elementary. The law defines the validity of each type and the bases on which it may be granted. The bases of issuance are training, experience, a successful examination, and a thesis on an educational problem approved by the State Superintendent; or four years of successful experience, a year of work in a recognized

¹The School Law, op. cit., pp. 173, 178.

²Laws of Illinois, pp. 590, 591.

³The School Law, op. cit., pp. 171-80.

higher institution beyond the original required training, and a limited certificate.

The State Examining Board and the county superintendent issue the limited certificates. The law provides for seven types of limited certificates, namely, the limited supervisory, the limited high school, the limited special, the limited kindergarten-primary, the limited elementary, the provisional elementary, and the emergency certificate. These certificates, except the supervisory and the emergency, are issued on the basis of training or a successful examination. The limited supervisory certificate is issued on the basis of four years of successful teaching experience as well as training. The emergency certificate is granted for temporary purposes and only on the basis of training. The law provides for the renewal of limited certificates.

The study of the legal basis of the certification of teachers should not be concluded without a brief mention of the certification bill passed by the Fifty-Ninth General Assembly (1935-1936) which the Governor vetoed. This bill proposed three changes in the certification law now in effect, namely, that the training requirement for all limited certificates should be 120 semester hours in a recognized higher institution, that both life and limited certificates should be issued entirely on training, rather than training or examination, and that the requirement for advance from the limited to the life certificate be the Master's degree.¹ The foregoing proposed changes may be interpreted to represent a criticism of the present method of certifying teachers in Illinois.

Contractual Relations of Teacher with School Board

Certificate necessary for employment.--The possession of a teacher's certificate has been an absolute condition of employment as a teacher in the public schools since 1841. Contracts with uncertified teachers have been declared void.² Compensation

¹L. R. Grimm, "The Proposed Certification Law," Illinois Teacher, XXIV, No. 9 (May, 1936), 292.

²Wells v. People, 71 Ill. 532.
Stevenson v. School Directors, 87 Ill. 255.

for services rendered by an uncertified teacher is not allowable.¹ Moreover, the certificate must cover the entire period of employment.² The present law governing the above is as follows: "No one shall be authorized or employed to teach in the common schools of the state or shall receive for teaching any part of any public school fund--who does not, at any time he enters upon his duties, hold a certificate of qualification covering the period of his employment and granted by the State Superintendent of Public Instruction, by the State examining board, and a county superintendent as hereinafter provided, or, by the board of education of a city having a population exceeding 200,000 inhabitants: Provided, however, that the provisions of this Act relating to limited State certificates shall not apply to counties having a population exceeding 500,000 inhabitants."³

Term of contract.--Previous to 1927, the term of employment of all teachers was one year. In 1927, the General Assembly provided that all teachers, principals, and superintendents were eligible for employment for periods of three years, after a probationary period of two years, in a school district having a board of education or board of school inspectors. It was provided, however, in this statute, that in case of decrease of enrollment or the discontinuance of a particular subject, the board of education or the board of school inspectors was empowered to dismiss teachers under the three-year contract at the end of a school year by giving a notice of at least sixty days.

Annulment of contract.--The statutes empower the school directors "to dismiss a teacher for incompetency, cruelty, negligence, immorality, or other sufficient cause."⁴ The school directors have possessed substantially this power since 1855. The board of education is empowered "to dismiss and remove any teacher, whenever, in the opinion of the board of education, he is not qualified to teach, or, whenever, in the opinion of the board of education, the interest of the schools may require it."⁵ This

¹Kuenster v. Board of Education, 134 Ill. 165.

²Stevenson v. School Directors, 87 Ill. 255.

³The School Law, op. cit., p. 171.

⁴Ibid., sec. 115, clause 3, p. 55.

⁵Ibid., sec. 127, clause 8, p. 65.

power of the board of education has been almost identically phrased in the school laws since the passage of the school law of 1872.¹ The two statutory provisions are very inclusive in nature. The board of education may exercise whatever power is granted in the first provision as well as in the second. Attention is called to the fact that the phrase "in their opinion" is used twice in the second provision. The Appellate Court in the case of Board of Education v. Stotlar interpreted the meaning of "in their opinion" as follows:

The cause for removal and dismissal mentioned in this clause, are made to depend on the opinion of the board of education, and to emphasize such fact the phrase in their opinion, is used twice in the alternatives mentioned in the statutes. When the teacher is dismissed and the reason therefor springs out of his own conduct, and the directors so charge, it is essential that some other person than the contracting parties should be arbiters in the matter; but when the dismissal is dependent on a cause that the board of education in their opinion may entertain, the teacher has no remedy in case of dismissal, at least as long as the board of education exercises the power in good faith.²

The Supreme Court in a very recent case ruled that a board of education was not empowered to dismiss a teacher on the basis of "opinion" or "the best interest of the school." It was held that a specific cause of removal must be given. The court said: "We believe that a proper interpretation of the power of boards of education gives to them the power of removal and dismissal of teachers for cause and was not intended to bestow upon them power to arbitrarily or without cause dismiss teachers from their employment, and that the power to dismiss and remove any teacher 'whenever in the opinion of the board of education, he is not qualified to teach, or whenever, in the opinion of the board of education, the interests of the schools may require it,' is but the specification of another cause of removal."³

The courts have elaborated upon the causes for annulment of teachers' contracts, but for each cause given by the courts there is ample statutory authority, at least by strong implication. The causes given by the courts are incompetency, insubordi-

¹Laws of Illinois, 1872, p. 738.

²95 Ill. App. 250.

³Hartmann v. Board of Education, 356 Ill. 577.

nation, negligence, absence without leave (may be interpreted as negligence), uncontrollable temper, and immorality.

Teachers' Pensions

In 1915 the General Assembly enacted the State Teachers' Pension and Retirement Fund law. It may be characterized as a flat-rate payment and a flat-rate annuity system. The law of 1915 is still in effect with some amendments. The amendments pertain to the (1) selection of members of the board of trustees, (2) the moneys constituting the fund, (3) the payments of participants, and (4) the annuities for teachers over seventy years of age who have taught twenty-five years. The Governor at present appoints three members of the board of trustees as a result of the amendatory act of 1919.¹

The Board of Trustees report that since the law went into effect in July 1, 1915, 8,312 teachers have elected to become contributors to the fund. There are at present about 30,000 compulsory contributors. On July 1, 1935, 2,365 persons were receiving full annuities, and 153, the annuities because of disabilities. The receipts for 1934-1935 including a cash balance of \$329,568.01 on hand were \$1,218,025.49. The disbursements were \$1,013,673.82 for 1934-1935, leaving a cash balance of \$204,352.67 on July 1, 1935.²

Reports of some studies of the Illinois pension system are presented in brief. Sudensky in 1920 classified the Illinois pension fund as a fund with inadequate reserves.³ The commission appointed by the Forty-Ninth General Assembly to study the various pension laws and funds declared the teachers' pension fund insolvent.⁴ The investigation made by the authority of the Fifty-Sixth General Assembly revealed the fund insolvent and

¹Laws of Illinois, 1919, p. 706.

²Annual Report of Board of Trustees of Illinois State Teachers' Pension and Retirement Fund, 1934-1935, pp. 22, 29.

³Paul Studensky, Teachers' Pension System in the United States, pp. 176-79. New York: D. Appleton & Co., 1920.

⁴Illinois State Teachers' Pension Fund, p. 16. Research Bulletin by Trustees of Illinois State Teachers' Pension and Retirement Fund. Danville: Illinois Printing Co., 1930.

doomed to dissolution.¹ L. R. Grimm in 1936 reported that the present pension fund has nearly \$45,000,000.00 of net accrued liability and that the liability is growing rapidly.² To generalize, new pension legislation in the reasonably near future is necessary, if the Illinois teachers' pension system is to be placed on a sound basis.

¹Ibid., p. 17.

²Information on Proposed Pension Bill, p. 9. Department of Research and Statistics. Springfield: Illinois State Teachers' Association, 1936.

CHAPTER X

SUMMARY AND CONCLUSIONS

The purpose of this study has been to present a genetic and analytical treatment of the legal basis of the organization and administration of the public schools of Illinois. The decisions of the courts relating to administrative problems have been drawn upon as much as possible. An attempt has been made to point out the most important trends in the development of educational policy in Illinois.

The trend in constitutional development in respect to education in Illinois has been toward more detailed provisions for education. Illinois falls between the two extremes, eastern states on the one hand, with few constitutional restrictions, and western states on the other hand, with many detailed provisions for education. It is widely held that the constitutional conventions of Illinois have not in every case differentiated between policies fundamental or permanent in nature and policies which ought to be subject to ready change.

The courts have consistently held the power of the General Assembly to develop educational policy to be plenary except as restrained by the federal and state constitutions. The most significant constitutional provision of educational nature respecting the General Assembly is that the General Assembly shall provide a thorough and efficient system of free schools for all the children of the state. In the exercise of this duty, the General Assembly has reserved part of this responsibility to itself and has delegated part of it by creating subordinate agencies for specific educational purposes.

The social theory of public education in Illinois is that the state assumes the responsibility for schools because it is believed that the very existence of a democratically organized society depends on intelligent and socially minded individuals. The ultimate end of education, in legal theory, is the welfare of the citizens of the state in the interest of good government.

The General Assembly in the creation of state agencies in

education has conferred relatively broad powers on the Trustees of the University of Illinois, the State Normal School Board, and the Board for Vocational Education. The General Assembly, in providing for the Office of Superintendent of Public Instruction, has not refrained from regulating by statute details of an administrative character. The Superintendent of Public Instruction has not been granted broad administrative powers in the sense that local boards of education in this state bestow administrative authority on their chief executive officers.

The unit or agency of local school organization and administration in Illinois is the district. The courts hold the school district to be a quasi-municipal corporation, created by the General Assembly to carry out state policy. The district is also held by the courts to be an involuntary and political or civil division of the state, created as an auxiliary of the state to aid in the administration of government. The school districts of Illinois are fiscally independent.

The General Assembly has created a very complicated district system. Approximately ten per cent of the school districts in the United States are in Illinois. The number of lay school officers exceeds the number of teachers. Moreover, there are many different types of districts. There is inexcusable waste in the district system of Illinois. Public education in Illinois is dominated by localism. The General Assembly has provided that school boards determine the curriculum, employ teachers, and build school houses with little supervision from a centralized authority. The trend toward simplification of local school administration is insignificant. The county superintendent does not exercise the supervisory authority that his voluminous duties and powers as defined by statute would indicate upon first reading.

Approximately ninety-five per cent of the financial support of schools is derived from the local tax on real property. It has not been easy to change the system of taxation in Illinois because of the restriction contained in the revenue clause of the Constitution. Illinois ranks thirty-sixth among the states of the Union in the distribution of financial aid to schools. There is much inequality in the provisions of educational opportunity throughout the state. The trend in the ratio of state aid distributed to schools to total state expenditures has not been

favorable to the schools. Only the first eight grades participate in the state distributive fund, even though the courts have interpreted repeatedly the high school to be a part of the common schools. There is evidence of a trend toward high school participation in the state distributive fund, however.

It was not until the general revision of the school law in 1872 that all children gained the full statutory right to attend the public school. The courts, however, have consistently protected the right of the child to attend school. It was only eleven years after the revision of the school law in 1872 that the General Assembly passed the first compulsory attendance act. School attendance has improved perceptibly with the enactment of compulsory attendance laws. The courts have consistently sustained school boards in the enforcement of pupil discipline if reasonable and without malice or wilfulness.

Teachers are certified by the Superintendent of Public Instruction and the State Examining Board in co-operation with the county superintendent of schools. The present method of certificating teachers represents a trend toward strong centralization of state authority in school administration. The General Assembly has regulated by statute in detail the requirements for certificates, however. The most significant legislation pertaining to the curriculum has been and is found in the certification legislation. The courts have not "disturbed" school boards in the exercise of discretion in the employment and dismissal of teachers. Acts of school boards relating to the management of teacher personnel, and pupil personnel as well, have been interpreted by the courts in the light of the purpose for which the schools were established. The General Assembly has provided a pension system for teachers, which, in the opinion of investigators, is doomed to dissolution unless revision is forthcoming with a reasonable period of time.

This analysis of the legal basis of the public schools of Illinois leads to certain broad generalizations.

First, the framers of the constitutions of Illinois and in particular the framers of the present constitution failed to distinguish clearly between educational policies fundamental or permanent in nature and educational policies which ought to be subject to ready change. The present constitution contains provisions relating to public education which are statutory in char-

acter and which inhibit the development of the most effective types of state and local administration. Until the constitution is amended, it will be difficult, if not impossible, to develop the types of control and financial support in Illinois which experience and the study of public education indicate as most desirable.

Second, in the exercise of the powers conferred upon it by the Constitution, the General Assembly has not followed the policy of delegating, to any great extent, broad discretionary powers to administrative agencies. The General Assembly has rather adopted the policy of regulating many of the details of the administration of public education by legislative enactment. The development of administrative law has not progressed as far in Illinois as in a number of other states--that is, the states in which the legislatures have conferred broad powers upon state boards of education or other administrative agencies.

Third, although there has been some centralization of administrative authority in Illinois, notably in the case of the certification of teachers, educational administration is still characterized by diffusion and localism. Powers of a state-wide nature are not exercised by a single state agency, but by such agencies as the Trustees of the University of Illinois, the Normal School Board, the Board for Vocational Education, and the Superintendent of Public Instruction. Moreover, the state office charged with the duty of supervising the common school has not been granted large administrative discretion.

Fourth, in the delegation of administrative powers in Illinois, it has been the policy of the General Assembly to diffuse control among an exceedingly large number and varied types of local units. Thus, the public schools of Illinois are dominated by localism both with respect to control and financial support. The district system of Illinois, which consists of more than twelve thousand administrative units or approximately ten per cent of the school districts of the United States, is of necessity complicated, wasteful, and inefficient. It is out of this situation that much of the existent inequality of educational opportunity arises.

Fifth and finally, it may be pointed out that educational policies designed to adjust the schools to changing conditions of life have not been evolved. Illinois has become a great industrial

state, but the organization and the administration of the public schools have remained essentially as that developed for a rural economy.

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